



THE EPISTLE ON LEGAL THEORY

A TRANSLATION OF AL-SHĀFI'Ī'S RISĀLAH



AL-SHĀFI'Ī

TRANSLATED BY JOSEPH E. LOWRY

The foundational document of Islamic legal theory

THE EPISTLE ON
LEGAL THEORY

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THE EPISTLE ON LEGAL THEORY

A Translation of al-Shāfi'ī's *Risālah*

BY

Muḥammad ibn Idrīs al-Shāfi'ī



TRANSLATED BY
JOSEPH E. LOWRY

FOREWORD BY
KECIA ALI

VOLUME EDITOR
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FOREWORD

KECIA ALI

Every few semesters, I teach a class on Islamic law. My students are mostly undergraduates majoring in International Relations or studying the Middle East. They want to learn about jihad, about terrorism, about family law, and about the “plight” of Muslim women. Some are curious about “creeping shariah law” and the threat it purportedly poses to American democracy.

They are surprised when I begin with ritual purity.

We devote one session to an in-class exercise on ablution, the ritual washing before prayer. Together, we read the Qur’an’s two brief passages on the topic which, they quickly conclude, provide insufficient guidance on exactly how to wash. I then distribute an eight-page handout with selected hadith-reports of the Prophet Muḥammad’s practice. These relate how Muḥammad washed before prayer and also the advice he gave to others about washing. I divide the students into small groups and charge each with answering a specific question: for instance, how many times does one wash one’s face? There are so many reports, some of them contradictory, that students decide that they now have too much information. Last, we turn to a medieval legal manual that explains in precise detail how to perform ablution. It tells how many face-washings are required and how many are optional. The students are always a bit baffled: how did this scholar get from the Qur’an’s vague commands and the many competing accounts in the hadith-reports to specific rules? How, from a profusion of possibilities, did he arrive at categories

like obligatory and recommended? The answer, it turns out, is legal theory.

One might also say, just as accurately, that the answer is al-Shāfi‘ī.

Al-Shāfi‘ī was born a century and a half after Muḥammad died. He never questioned that Muslims were obligated to follow God’s revealed law. He devoted his life to the quest to determine how best to do so. He memorized the Qur’an, as all scholars did. He studied Prophetic Practice by learning hadith-reports, though he was not especially gifted or distinguished in that field. He moved from city to city, studying with, debating, and eventually teaching key thinkers of his era. His restless seeking was prompted by the question that stymied my students: how does one follow God’s law when the evidence is sometimes scanty or confusing? Al-Shāfi‘ī found existing approaches unsatisfactory, either too dependent on individual or local preference, or too unsystematic. In conversations and debates with scholars in Arabia, Iraq, and Egypt, he refined his method for interpreting and applying divine law.

Al-Shāfi‘ī believed that God revealed guidance for all human behavior in the Qur’an and through the exemplary practice of the Prophet Muḥammad. Sometimes the rules were straightforward. Sometimes, however, discerning them required the judicious application of reason. Reason was never to be preferred to an answer directly from the Qur’an or a Prophetic hadith-report, but it might sometimes be necessary for reconciling texts that seemed to be divergent or contradictory. Al-Shāfi‘ī was particularly concerned with harmonizing the Qur’an and Prophetic hadith-reports to yield specific guidance for human behavior—how many times to wash one’s face while performing ablution, for example.

The Epistle on Legal Theory (al-Risālah), translated here by Joseph Lowry into lucid, fresh, and precise English, represents al-Shāfi‘ī’s mature statement about how to resolve such methodological problems. Readers will bring to *The Epistle* a variety of concerns. Few readers of this translation will be antiquarians, fewer still specialists in Islamic legal thought of the formative period. If my students are

any indication, most non-specialists come to the study of Islamic law from an interest in the contemporary state of affairs among Muslims. That being the case, why bother with what is in some respects an outdated exploration of epistemology and hermeneutics?

One reason is that one cannot understand Islamic law without understanding some of Islamic legal history, and al-Shāfi‘ī is indispensable for legal history—indeed, for Islamic history as a whole. History is, in part, the story of how certain things came to be taken for granted. When al-Shāfi‘ī began his career, it was not assumed that Prophetic hadith-reports could carry legal weight, or that they were a form of revelation parallel to the Qur’an. Al-Shāfi‘ī, whose labors earned him the title “Defender of Prophetic Practice,” was responsible for the view, one now shared by the majority of the world’s Muslims, that Prophetic hadith-reports are the *only* texts that supplement the Qur’an as a source of religious law.

Another reason is that al-Shāfi‘ī presents important, creative answers to issues that Muslims continue to grapple with: what sources of guidance exist? Who is qualified to interpret texts? How does one become qualified? How does interpretation change as circumstances change? How does a scholar balance revealed sources with her own instincts and rational capacities? How much should any person trust in others’ deliberations and how much must he work out for himself?

Like others trained in Islamic Studies, I read *The Epistle* as a graduate student, but I did not fall in love with al-Shāfi‘ī until I began to study his *Exemplar (al-Umm)*, a massive compendium of doctrines and their justifications. I mined this multivolume work extensively for my writings on early Muslim marriage and divorce. As my project was comparative, I continually considered al-Shāfi‘ī’s logic and approach alongside those of his predecessors and peers. Al-Shāfi‘ī’s arguments were invariably more sophisticated, coherent, and painstakingly argued. Still, it was only when I agreed, somewhat rashly, to write a biography of al-Shāfi‘ī that I returned with any seriousness to his methodological writings. I discovered, then, how

intertwined *The Epistle*'s methods are with *The Exemplar*'s substantive rules: al-Shāfi'ī was wedded to consistency.

Al-Shāfi'ī's doctrines and methods are much better attested than his life story. What *is* clear is that engagement with other scholars was crucial to his formation and the formation of his legal theory. Learning and teaching were central to his life, and debating helped sharpen his points and hone his answers. From those who came before him, he took what they had developed, questioned it, refined it, kept what worked, and adapted or discarded what did not serve him. In the years, decades, and centuries after his death, his students, their students, and their students, and so on for generations, did the same. Though mature Sunni legal theory departs in important respects from the model laid out in *The Epistle*, it undeniably rests on the foundation al-Shāfi'ī laid.

With this translation of *The Epistle*, Lowry—who, like al-Shāfi'ī, combines scholarly expertise and legal acumen—also moves the conversation forward, building on and moving beyond the work of his scholarly forbears. With pleasure, I welcome you into the conversation.

Kecia Ali

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Devin Stewart deserves more than a special word of thanks for serving as my project editor. Not only did he save me from many errors of all kinds, but it would be no exaggeration to say that he made nearly every paragraph of this translation better, especially with his wise counsel and many suggestions for improvement in matters of English style.

My mother read the whole translation for style and naturally wondered why anyone would exchange dried dates for dried dates (“what’s the point?”). Why indeed! Finally, I must thank my family, which includes Bronwynne, H  l  ne, and Lucy, and of course Michael, Jonathan, Vanessa, Louise, and Larry.

INTRODUCTION

Two of my favorite medieval quotations about al-Shāfi‘ī assign to him a foundational role in the emergence of Islamic legal theory. The great theologian and jurist Ibn ‘Aqīl (d. 513/1119) affectionately called al-Shāfi‘ī “the father of this science, and its mother.”¹ Fakhr al-Dīn al-Rāzī (d. 606/1209), a towering figure of Sunni religious thought, proclaimed that al-Shāfi‘ī’s “relationship to the science of legal theory is like that of the philosopher Aristotle to logic.”² While a more nuanced narrative of the history of Islamic legal thought might wish to qualify the portrayal of Muḥammad ibn Idrīs al-Shāfi‘ī as its “master architect,”³ there is no denying that he is a centrally important figure in the history of Islamic law, and that his *Epistle on Legal Theory* is the first work in Arabic, or at least the earliest surviving such work, to offer a sustained theoretical account of textual interpretation, legal epistemology, and legal reasoning in Islamic law.

These facts about al-Shāfi‘ī alone would justify the decision to offer this new English translation of his *Epistle*. At a time, however, when Islamic law is increasingly the subject of skeptical media reports and hostile political and cultural polemic, and when its core concerns are generally portrayed as lurching between misogyny, jihad, and gruesome and immutable penal sanctions, the idea that Muslim jurists have spent nearly a millennium and a half debating subtleties of legal theory may seem unlikely. In fact, Muslim jurists

produced a rich and highly sophisticated body of literature on legal theory that begins with the work translated here.

EARLY ISLAMIC LAW

The Prophet Muḥammad received revelations from AD 610 until his death in 11/632, and these were codified about two decades after his death into the version of the Qur'an that we have today. Although the Qur'an is a complex, tightly structured literary text that seems designed primarily for oral recitation, perhaps originally in some kind of liturgical setting, it nonetheless contains conspicuously legislative passages, some of them lengthy and technical. Qur'anic legislation deals with ritual, dietary matters, commercial law, inheritance, family law and sexual morality, torts, and penal law, and is often said to amount to about six hundred out of the approximately 6,236 verses that comprise the Qur'an.⁴ Most such legislative passages are traditionally thought to have been revealed after Muḥammad's emigration from Mecca to Medina (1/622), during a period of growing political and military success in which issues of governance and the regulation of communal and religious life came increasingly to the fore. Muḥammad no doubt supplemented Qur'anic legislation with other rules. One early example of such extra-Qur'anic rule-making survives in the collection of statutes conventionally referred to as the "Constitution of Medina," which regulates relations among the various Medinese tribes, the Meccan immigrants who were Muḥammad's followers, and the Jews of Medina. It also regulates the civil and military interactions of these groups with outsiders.⁵

Upon Muḥammad's death, Arabia had to be resubjugated to Medinese rule in the so-called wars of apostasy (*riddah*). For nearly three decades thereafter, the early Muslim state was ruled from Medina by close and respected associates of Muḥammad's. As a result of the conquests undertaken during this time in Iran, Syria, and North Africa, Byzantine control of the Middle East came to an end, and the Sasanian Empire, which had ruled Iran for four

centuries and constituted the main rival to Byzantine power in the Middle East, was overrun. The following decades, however, witnessed a series of civil wars in which various factions among the Arab and especially the Meccan elites vied for control of the early Islamic state. Because these conflicts involved individuals who were close to Muḥammad, their active participation in such civil strife was theologically fraught, and it is tempting to see the emergence of early forms of Islamic speculation about piety, including the development of a comprehensive religious law, at least partly as a response to these events.

The speculative elaboration of norms may have begun in earnest just before the turn of the second/eighth centuries in urban centers such as Mecca and Medina in Arabia and Kufa and Basra in Iraq.⁶ The raw materials for this early juristic activity consisted of the Qur'an's legislative passages; traditions about Muḥammad and the early Muslim community; pious speculation about virtue, ethics, and salvation; and whatever legal notions formed a part of the background culture of a given urban center and its inhabitants. The mixtures of these various elements could vary widely not only from one jurist to another but also between different regions and even within a single region. The gradual assumption by state-appointed judges (sg. *qāḍī*) of a more conspicuously religious function at about this same time probably provided some institutional reinforcement for the impetus to formulate comprehensive rules about a wide variety of subjects, relating both to ritual and to more “secular” matters.⁷ It should be noted that research into the earliest history of Islamic legal doctrine remains in its infancy.

The elaboration of legal theory emerged against this background, conditioned by several factors that determined the questions that interested those early jurists who turned their attention to questions of matters of hermeneutics, epistemology, and the like. The emergence of Prophetic hadith-reports (sg. *ḥadīth*)—short narratives about the activities of the Prophet Muḥammad that often had legal implications—provided a rich but sometimes conflicting

collection of legal precedents.⁸ Norms suggested by hadith-reports often needed reconciling with the legal passages in the Qur'an as well. Thus, textual interpretation with the goal of harmonizing and distinguishing such texts was an important early hermeneutical concern. Emergent techniques of textual interpretation benefited from early attempts to formulate the rules of Arabic grammar in ways that bore specifically on problems of semantics, especially in the context of Qur'anic exegesis. Since the Qur'an consisted of divine speech, the linguistic analysis of its lexicon, structures, and content also had important theological implications, so that early forays into Arabic grammar occurred with special reference to problems in law and systematic theology.

Another kind of question was generated by the fact that many early legal opinions seemed to be relatively unattached to divinely inspired texts or precedents. The existence of many rules produced solely through juristic speculation invited early jurists to discuss various aspects of legal epistemology. One problem concerned the sources of the law: What texts constituted binding authority? Although a relatively rich variety of Prophetic hadith-reports were available, it is not clear that all jurists looked first to them as sources of law. In regard to the textual sources of law that were available—the Qur'an, hadith-reports, preserved opinions from early pious figures, and the writings and teachings of later jurists—how should one prioritize them? Although the Qur'an and hadith-reports were authoritative, the personal authority of certain early jurists might be compelling and so, too, might a local tradition be, such as that of Medina, where the Prophet had lived and founded the Islamic state. Moreover, the existence of rulings that seemed to derive directly from various jurists' reasoning inspired arguments about the role of reason in the law. Was law identical with the Good, a matter of expediency, a brute obligation, an elegant system of rules, or some combination of all of these? Was there an underlying coherence that should guide jurists in their search for rules, and what sort of

coherence was involved? If the role of reason was to be limited, how then should a jurist approach a case for which revelation or past authorities provided little or no guidance? And, finally, what specific rules and rulings made sense in a given social context? These and related questions form the main concerns of the *Epistle on Legal Theory* of al-Shāfi‘ī.

AL-SHĀFI‘Ī’S LIFE, LEGAL THOUGHT, WORKS, AND SIGNIFICANCE

Al-Shāfi‘ī was born in ‘Asqalān or Gaza in 150/767, the year in which the famous Kufan jurist Abū Ḥanīfah died.⁹ Raised in Mecca, he studied there with the city’s leading jurists, Muslim ibn Khālid al-Zanjī (d. 179/795 or 180/796) and the renowned jurist and transmitter of hadith-reports Sufyān ibn ‘Uyaynah (d. 198/814). From there he went to Medina to study with its leading jurist, Mālik ibn Anas (d. 179/795). After studying in Medina, the chronology of al-Shāfi‘ī’s life is somewhat hazier, but it seems certain that he traveled to Yemen and, more importantly, that he studied in Baghdad with the students of Abū Ḥanīfa, including Muḥammad ibn al-Ḥasan al-Shaybānī (d. 189/805). It seems likely that al-Shāfi‘ī produced his first writings in Baghdad, including an early version of his *Epistle on Legal Theory*, and that he attracted a circle of students while there. In 198/814 al-Shāfi‘ī traveled to Egypt in the company of the son of its newly appointed governor, a member of the ruling Abbasid family. Although he initially required assistance from the prominent Egyptian jurist ‘Abdallāh ibn ‘Abd al-Ḥakam (d. 214/829) to establish himself,¹⁰ Egypt was where al-Shāfi‘ī produced most of his voluminous works on Islamic law and legal theory, where he inspired a small circle of students to transmit his doctrines to posterity, and where in 204/820 he would die.

The jurisprudence that al-Shāfi‘ī learned from his Meccan teachers was an eclectic mix. It likely consisted of Qur’anic interpretation; Prophetic precedent in the form of hadith-reports; legal

rulings passed down from earlier important Meccan jurists such as ‘Abdallāh ibn ‘Abbās (d. 68/687–88), a late Companion of the Prophet, and his students, such as ‘Aṭā’ ibn Abī Rabāḥ (d. 115/733), and his students, such as Ibn Jurayj (d. 150/767); and presumably also some ideas about how to perform legal reasoning. In Medina, Mālik’s jurisprudence had a more focused orientation—the remembered practice of Medina, seat of the government of the early Islamic state and site of the Prophet’s successful founding of a religious and political community. In Baghdad, al-Shāfi‘ī encountered two contrary but immensely important trends in the legal thought of the late second/eighth centuries: the pietistic commitment to Prophetic hadith-reports as the primary evidence for Prophetic Practice and thus as the primary guide to personal religious practice, and the attempt to make the law rationally consistent by testing the interrelationship of rules by means of analogical reasoning and dialectics.¹¹ Al-Shāfi‘ī certainly encountered the latter, rationalist tendency in his studies with al-Shaybānī. It seems likely that al-Shāfi‘ī’s strong interest in Prophetic hadith-reports was stimulated by contacts with those engaged in the intensive study of hadith-reports such as Aḥmad ibn Ḥanbal (d. 241/855), whom he may also have encountered in Arabia. There is some validity to the idea that al-Shāfi‘ī forged a middle path between pietistic commitment to revelation and Prophetic Practice on the one hand and virtuosity in legal reasoning on the other.¹²

Al-Shāfi‘ī’s legacy as a supremely gifted jurist might have been secured solely by virtue of his works alone, but his Egyptian students and their students transmitted his works and his legacy to subsequent generations, leading to the consolidation of a school of legal thought (*madhhab*) named for him. Three other such schools survive in Sunni Islam as well, named after, and founded by the disciples of, Abū Ḥanīfah, Mālik, and Aḥmad ibn Ḥanbal, all persons with whom, or with whose students, al-Shāfi‘ī had direct contact. These schools of thought emerged over the course of the fourth/tenth centuries, although the process of their formation is

complex. It has been suggested that they could be considered more or less fully formed once they possessed distinctive doctrines, a regular curriculum, and a means for reproducing themselves as social institutions.¹³ Their authority in law for laypersons remained largely unquestioned until the modern period, which witnessed the destruction of the main institutions of Islamic law and legal education by European colonial powers and modern nation-states, and the rise of anticlerical movements such as Salafism.

Three students in particular played important roles in the dissemination of al-Shāfiʿī's legal doctrines. Ismāʿīl ibn Yaḥyā al-Muzanī (d. 264/877–78) wrote a digest (*mukhtaṣar*) of al-Shāfiʿī's legal doctrines that became a standard text of the Shāfiʿī school of legal thought, even though later jurists also frequently commented on the fact that al-Muzanī felt free to deviate from his teacher's views, perhaps more than he ought to have done. Rabīʿ ibn Sulaymān al-Murādī (d. 270/883–84) is the transmitter of all of al-Shāfiʿī's surviving works. A state-employed muezzin (prayer-caller), he was famed for faithfully and accurately passing on his teacher's writings to scholars who visited Egypt, but he was also an active promoter of al-Shāfiʿī's views and seems to have corresponded actively with like-minded persons in other regions to promulgate his teacher's doctrines. Abū Yaʿqūb al-Buwayṭī (d. 231/846) also made an important abridgment of al-Shāfiʿī's writings, including an abridgment of his *Risālah* which has recently been translated.¹⁴

The main surviving work by al-Shāfiʿī is his *Kitāb al-Umm* (more or less, *The Exemplar*), a voluminous work on positive law that covers the usual subjects found in works on Islamic law, beginning with ritual matters such as ritual purity, prayer, pilgrimage, and so on, and moving on to subjects such as property, torts, and contracts. The *Umm* seems from an early date to have traveled through time bundled together with other, shorter works by al-Shāfiʿī. These works, which range in size from medium-length essays to book-length treatments, included commentaries on the works of earlier jurists, commentaries on commentaries on such works, literary

records of debates about discrete topics of positive law with contemporaries, and several works on legal theory, or more precisely on legal hermeneutics. One such work on legal theory and legal hermeneutics may originally have served as a kind of introduction to all the texts that make up the *Umm*—the *Epistle on Legal Theory*.

A NOTE ON THE TEXT

Premodern Muslim jurists who wrote on legal theory were aware of the *Epistle's* importance. Badr al-Dīn al-Zarkashī (d. 794/1392), a later medieval author, states unequivocally that al-Shāfi'ī was “the first one to compose a work on legal theory,” and then gives a list of several works, at the head of which stands the *Epistle*.¹⁵ As a Shāfi'ī jurist, al-Zarkashī was favorably disposed toward al-Shāfi'ī, but some of the *Epistle's* key ideas also became the target of interschool polemic, such as in the work of the important Ḥanafī (i.e., a follower of Abū Ḥanīfah) jurist al-Jaṣṣāṣ (d. 370/981) or the Mālikī (i.e., a follower of Mālik) Ibn al-Labbād (d. 333/944).¹⁶ Although commentaries were written on the *Epistle*, it remains unclear whether any survive.

The *Epistle on Legal Theory* has also been much discussed in Western scholarship ever since it began to appear in modern printings in late nineteenth-century Egypt. For many years it was regarded as a kind of blueprint of Islamic legal theory, which was neatly though somewhat misleadingly summarized in Western studies as consisting of a hierarchy of four sources of law that were “mined” in descending order for apposite rules: the Qur'an, Prophetic hadith-reports, consensus of the Muslim community, and legal interpretation using analogy.

The Qur'an's legal content, as noted above, is relatively limited. Much more vast is the corpus of Prophetic hadith-reports, which are understood to collectively contain a record of Prophetic Practice (*sunnah*, from which the adjective Sunni is derived), the sum

total of Muḥammad's religiously relevant practices.¹⁷ Individual hadith-reports provide accounts of individual Prophetic practices (pl. *sunan*). Consensus (*ijmāʿ*) is a more elusive concept, but the basic idea is that the Muslim community as a whole, perhaps as represented by its jurists, is incapable of agreeing on an error. This notion suggests that individual rules and precedents somehow become collectively validated, but in practice such unanimous consensus was difficult to achieve and the concept may, at some level, have validated legal disagreement and diversity more than actual discrete doctrines. No doubt it also expressed an important theological idea about the saved character of the Muslim community. Finally, legal interpretation (*ijtihād*) pursued by means of analogical reasoning (*qiyās*) involves the attempt to develop rules for new situations by relating those situations to preexisting rules that govern similar situations. The problem of extending the divine law to situations that it seemed to govern only by implication raised theological and epistemological problems that were handled differently by different jurists.

The emphasis on the four sources in Western scholarship is probably partly connected with the popularity of legal positivism in England in the 1960s, and it is tempting to see in it a nod to H. L. A. Hart's concept of the master rule of recognition.¹⁸ Understanding the "four sources" through the prism of Hart's concept of the master rule would also accord well with the view of Islamic legal theory as a means for producing actual rules that were derived by private jurists and also applied and enforced in courts by Muslim judges.¹⁹ However, some have wondered whether Islamic legal theory was not instead a retrospective exercise in justifying a diverse set of preexisting rules, not otherwise easily reconcilable, by imagining a methodology that might account for them. It would also be possible to understand Islamic legal theory as an extended discussion of legal epistemology in which questions of theology, language, authority, community, and so on were explored as a way of dealing, perhaps through intellectual play, with the very complex problem

of confronting the inherent uncertainty in attempts to discover divine legislative intent.²⁰ All of these tendencies in Islamic legal theory seem relevant, and their emphasis could shift from author to author—they are all in evidence in the *Epistle*, even though it differs in important ways from later works that belong to the principal genre of writing on Islamic legal theory, a genre termed in Arabic “the foundations of the law” (*uṣūl al-fiqh*).²¹

Whatever the relevance of Hart’s concept of the master rule, there is something intensely positivist about Sunni legal theory, and that positivism begins in some ways with the *Epistle* and its argument that all rules are derivable, directly or indirectly, from the Qur’an and the corpus of hadith-reports. The *Epistle*’s main argument is that the divine law forms a coherent whole. The specific propositions that support that argument are the following: (1) the Qur’an and the hadith-reports contain a complete expression of the divine law, whether directly or inferentially; (2) no matter how incompatible the revealed source texts—the Qur’an and the hadith-reports that provide accounts of Prophetic Practice—may appear in regard to a given legal issue, contradiction is always illusory or explicable; (3) Prophetic hadith-reports are an authoritative source of law that independently supply rules on their own; and (4) the divine law is absolutely complete and leaves no situation ungoverned.²² These “theses” must reflect a polemical context in which hadith-reports had not gained complete acceptance as authentic expressions of Prophetic Practice, and Western scholarship has emphasized the importance of the accounts of individual Prophetic practices, in the form of hadith-reports, in al-Shāfi‘ī’s thought.²³ In addition, al-Shāfi‘ī’s insistence on confining legislation within the bounds of the Qur’an and Prophetic Practice as expressed in hadith-reports also gave Islamic law a textual focus that contributed significantly to the development of hermeneutical speculation and to Islamic law becoming what has been called “a literary discipline.”²⁴

The text of the *Epistle* may be divided into an introduction and three main sections. The introduction (paras. 1–71) begins by

invoking what has been called the “mission-topos,” a recitation of sacred history that surveys the progress of Abrahamic monotheism, deviations from it by recalcitrant communities, and its culmination in God’s sending of Muḥammad.²⁵ Next comes praise of the search for religious knowledge (paras. 14–15) and the assertion that the divine law covers every eventuality that could possibly befall a believer (para. 16). After these important preliminaries, the theoretical account of the divine law begins in earnest. Al-Shāfi’ī describes all the modes of what he calls the “legislative statement” (*bayān*) (paras. 17–49). These are the four basic ways that God communicates the divine law to humans: through the Qur’an alone, through the Qur’an and accounts of Prophetic Practice together, through Prophetic Practice alone, and then through indications in the Qur’an and/or Prophetic Practice that serve as the basis for certain defined types of inference.²⁶ Al-Shāfi’ī closes the introduction with a brief discussion of legal epistemology (paras. 50–51) and then of the Arabic language, in which he refutes the claim that the Qur’an includes any language other than Arabic and describes certain interpretive difficulties posed by Arabic (paras. 52–71).

The description of the varieties of legislative statement, in addition to attributing an aesthetically pleasing structural symmetry to the divine law, seems to provide an outline of the entire *Epistle*. The three sections that follow and comprise the rest of the *Epistle* deal with: (1) how to interpret and derive rules from the Qur’an and Prophetic Practice; (2) how to interpret and derive rules from accounts of Prophetic Practice, which constitutes an independent source of law; and (3) how to perform legal interpretation and analogical reasoning.

In the first section, al-Shāfi’ī offers examples that illustrate how passages from the Qur’an and accounts of Prophetic Practice (hadith-reports) combine to furnish rules, something that occurs under three rubrics: norms expressed in “unrestricted” and “restricted” language (*‘amm*, *khāṣṣ*) (paras. 72–97), norms subject to “abrogation” (*naskh*) (paras. 126–82), and norms expressed by means of

“general” and “explicit ” texts (*jumlah, naṣṣ*) (paras. 183–255). The discussion of unrestricted and restricted passages begins with a series of examples of the complex ways that Qur’anic language signifies inclusion and exclusion of members of a class (paras. 72–89). It seems reasonable to think that these examples correspond to the first type of legislative statement. A series of examples follows in which hadith-reports restrict the application of apparently unrestricted Qur’anic passages (paras. 90–97). These examples evidently begin a longer section of examples of the interaction of the Qur’an and Prophetic Practice that extends over the other two hermeneutical rubrics just mentioned, abrogation and general and explicit obligations. Although abrogation ought simply to describe the historical succession of rules, it emerges that actual instances of abrogation involve a complex and nuanced relationship between the Qur’an and accounts of Prophetic Practice. In addition, the Qur’an contains obligations expressed in general terms whose details are supplied by explicit hadith-reports. All three of these rubrics (beginning with the harmonizing examples of the restricted and the unrestricted) correspond to the second type of legislative statement, in which the Qur’an and Prophetic Practice function together to express legal rules.

Between the discussion of unrestricted and restricted passages and abrogation comes the argument for the binding character of the Prophetic Practice as embodied in hadith-reports (paras. 98–125).

After the illustrations of the second type of legislative statement comes the long second section on the legislative function of hadith-reports. This section of the *Epistle* corresponds to the third type of legislative statement, in which hadith-reports alone express legal rules. It is divided into discussions of several discrete issues: First comes a searching series of questions posed by an interlocutor (see below) about seeming inconsistencies in al-Shāfi‘ī’s use of hadith-reports as a source of law and al-Shāfi‘ī’s point-by-point response (paras. 256–66). There follows a recapitulation of the hermeneutic rubric of abrogation with special reference to Prophetic Practice,

which gradually evolves into a general discussion of how to reconcile apparently inconsistent hadith-reports (paras. 287–375), and then a further discussion of how to interpret “commands” and “prohibitions” (*amr, nahy*) found in hadith-reports (paras. 376–433).

The lengthy section on Prophetic Practice continues with a brief discussion of “knowledge” (*ilm*, i.e., epistemology) (paras. 434–47), in which it is argued that knowledge is of two kinds, that appropriate for laypersons and that which is the preserve of specialists. The discussion of epistemology serves as a prelude to the discussion of the most prevalent kind of hadith-report, the so-called “uncorroborated report” (*khābar al-wāḥid*), a hadith-report with a single point of origin among the Companions of the Prophet Muḥammad—that is, a hadith-report whose “chain of transmitters” (*isnād*) originates with only one, rather than multiple, witnesses (paras. 448–567). The discussion of epistemology is relevant to such hadith-reports because they are, according to al-Shāfi‘ī, the least probative form of revealed text that nonetheless constitutes “authority,” “binding authority,” or “authoritative proof” (*ḥujjah*) for jurists. The discussion of uncorroborated reports is historically important since it is the earliest preserved systematic treatment of how to “confirm” (*tathbīt*) the “authenticity” (*ṣiḥḥah*) of hadith-reports by scrutinizing their “transmitters” (*muḥaddithūn*). The technical discussion of the formal analysis of hadith-reports is followed by a brief section on “consensus” (*ijmā‘*) (paras. 568–73). The discussion of consensus is difficult, but seems aimed at reaffirming the idea that the Muslim community as a whole is in possession of the entire corpus of hadith-reports that furnish accounts of Prophetic Practice. In this regard, it differs from later discussions of consensus, which assert in a much more straightforward way that consensus is simply the agreement of the Muslim community as a whole on any legal matter. Al-Shāfi‘ī seems to believe that consensus is that of jurists only, not of the Muslim community at large, his formulations such as “the people’s consensus” (e.g., para. 91) notwithstanding.²⁷ As with the discussion of epistemology, the discussion of consensus

seems to belong to the larger treatment of Prophetic Practice and thus to that part of the *Epistle* that corresponds to the third type of legislative statement. In later works on legal theory, consensus becomes an independent topic and is no longer subsumed under the discussion of Prophetic Practice.

The *Epistle*'s third section then treats in depth the fourth variety of legislative statement, "legal interpretation" (*ijtihād*) and its principal technique, "analogical reasoning" (*qiyās*) (paras. 574–686). Part of the discussion directs criticisms against "subjective reasoning" (*istiḥsān*, paras. 612–25), a name used by the followers of Abū Ḥanīfah for certain instances of legal interpretation.²⁸ The discussion of analogical reasoning then evolves into a series of examples that illustrate how such reasoning may be used to develop doctrinal consistency in certain persistently difficult problems that are characterized as instances of "legal disagreement" (*ikhtilāf*) (paras. 687–725). The *Epistle* closes with brief discussions of the epistemological status of the opinions of Muḥammad's Companions and of the relative status of the Qur'an, Prophetic Practice, consensus, and analogical reasoning (paras. 726–30).

Al-Shāfi'ī constructs most of his arguments by presenting example problems, that is, legal and textual problems in which the proper interpretive technique for deriving the law is demonstrated, or in which the successful resolution of a textual problem validates a particular hermeneutical rubric, such as distinguishing between the restricted and unrestricted import of revealed language. Often such example problems are simply presented one after another with no intervening prose. Al-Shāfi'ī offers only a few abstract discussions of theoretical matters; they include the above-noted discussions of the Arabic language, abrogation, problems involved in the use of hadith-reports, epistemology, and legal interpretation. Increasingly after the first third of the text, an interlocutor moves the discussion along. The interlocutor seems frequently to express views that are close to those of the early Ḥanafī jurists and seems partly inspired by the figure of al-Shaybānī; in his exchanges with the interlocutor,

al-Shāfiʿī seems occasionally to identify himself with the jurists of Medina and Mecca.

For al-Shāfiʿī the law is based entirely on revealed texts, the smallest units or building blocks of which he refers to as “reports” (sg. *khābar*). Both the Qurʾān and hadith-reports consist of such “reports”; the Qurʾān is the revealed word of God and the hadith-reports collectively comprise a record of Prophetic Practice as a whole. It is significant that al-Shāfiʿī seems to consider Prophetic Practice to be revealed (e.g., paras. 71, 132), though he sometimes uses the term “Revelation” (*al-tanzīl*) as shorthand for the Qurʾān (e.g., para. 136). The reports that make up the law might be “explicit texts” (*naṣṣ*) from the Qurʾān or hadith-reports, or “scriptural proof-texts” (*naṣṣ kitāb*) from the Qurʾān that express a rule in such a way that no additional clarification is required and are thus binding (*lāzīm*). More usually, however, they are characterized by ambiguity (*iḥtimāl*) because they are expressed in unrestricted language (*ʿāmm*) or in general terms (*jumlah, mujmal*). In such cases, the text in question has an “apparent meaning” (*ẓāhir*) and a “true meaning” (*bāʿin*); both meanings involve a truth (*ḥaqq*), but “objective certainty” (*iḥāṭah, ṣawāb*) is achieved only when one’s understanding encompasses both truths at once. When confronted with such a text, jurists must seek some indication (*dalīl, dalālah*) by means of an inference (*istidlāl*) from another report, from an instance of consensus, or from an analogy. Where there is no directly opposite revealed text, jurists must analogize from a revealed text. The divine law is thus always circumscribed within revelation and may be derived either directly (*naṣṣan*), which is preferable, or inferentially (*istinbāṭan/istidlālān*), in case of need.

The extent to which such juristic inferences lead to certainty remains unclear. In cases of revelational ambiguity requiring textual interpretation, al-Shāfiʿī may suggest that they sometimes do, but he does not unequivocally so state. However, al-Shāfiʿī is clearly aware that juristic inferences in cases of legislative silence—that is, legal interpretation by means of analogy—do not generally lead to such

certainty. In general, jurists are unable to tell whether certainty in such cases has been achieved, as illustrated by the many references to the problem of finding the “prayer-direction” (*qiblah*) when out of view of the Kaaba. This structural uncertainty in the law also entails the validation of “legal disagreement” (*ikhtilāf*) among qualified jurists in cases where the law poses substantial interpretive difficulties. Such legal disagreement seems to be allowed specifically in cases involving analogical reasoning, particularly difficult problems of textual interpretation, and reliance on uncorroborated hadith-reports. As a formal or functional matter, however, rules arrived at inferentially through legal interpretation by means of analogical reasoning have the force of law and are binding for laypersons.

As the many example problems in the *Epistle* make clear, one of the author’s major goals is to demonstrate how to harmonize the Qur’an with hadith-reports and also apparently inconsistent hadith-reports with each other. This harmonizing tendency was noted in one of the very earliest Western studies of the text, and it has been emphasized in more recent scholarship as well.²⁹ The discussions of the history of the law of prayer and of the penal regime for unlawful sexual intercourse, both under the rubric of abrogation, are spectacular examples—in my view—of al-Shāfi’ī’s genius for this kind of harmonizing legal reasoning (see paras. 138–43 and 163–71). In neither of those problems are the given materials easy to reconcile, and al-Shāfi’ī’s efforts in both problems reveal a seriously creative legal mind.

Al-Shāfi’ī provides two important discussions of language (paras. 51–72, 271–2) in which he argues that the hermeneutical difficulties posed by the Qur’an and the corpus of hadith-reports may be traced to the unusual richness of Arabic. He is certainly interested in the semantic properties of Arabic, since the scope of reference of rules stated in revealed texts provides a constant challenge to interpreters, who must determine the boundaries of the groups to which such rules apply. This concern emerges particularly clearly from the discussion of unrestricted and restricted passages

(paras. 72–97). It is fascinating, however, that al-Shāfi‘ī never once makes an argument from grammar, and that he seems not to use grammatical terminology. I say “seems not to” because most of his technical terms—unrestricted and restricted (*‘amm*, *khāṣṣ*), general and explicit (*jumlah*, *naṣṣ*), command and prohibition (*amr*, *nahy*), analogy (*qiyās*)—could be (and were) deployed in discussions of Arabic grammar, though with slightly different meanings. Although al-Shāfi‘ī never appeals directly to grammatical features of the language, he certainly implies that both the plural (in the discussion of restricted and unrestricted texts) and the imperative and negative imperative (in the discussion of commands and prohibitions, paras. 419–34) are inherently ambiguous.³⁰

Also noteworthy is al-Shāfi‘ī’s antirationalist theology, which is reflected in the several predestinarian slogans that he occasionally uses (paras. 6, 13, 110, 115, 121, 126, and 264) and also in his citation of Q Ra’d 13:41 (paras. 126, 264, and 589). The appeals to God’s foreknowledge and foreordainment often occur in conjunction with arguments for the authority of accounts of Prophetic practices and for the importance of abrogation, areas in which issues of legislative authority and the ontology of the divine law presumably remained the subject of debate. Perhaps also in paragraph 1, where the ability of humans to describe God adequately is doubted, one may see a subtle criticism of theologians’ debates about God’s attributes.³¹ The critique of subjective reasoning (paras. 612–9) may contain more than a hint of antirationalism. The general orientation of al-Shāfi‘ī’s jurisprudence around hadith-reports as a whole is already an important clue to his own antirationalist theological leanings, and it seems very clear that his concern to harmonize the Qur’an and hadith-reports within the categories of legislative statements reflects his deep commitment to the importance of the corpus of Prophetic hadith-reports as a whole: the argument that all such apparent contradiction can be explained and naturalized aims to integrate the corpus of hadith-reports fully and seamlessly into the divine law, alongside the Qur’an. The more difficult the exercise

in harmonization, the more compellingly the solution shows the Qur'an and Prophetic Practice to constitute a divinely planned, natural legislative whole.

An important question about the *Epistle* in the context of early Arabic literary history is whether it was a book. That is, did the author compose it and then himself put it into final form as a completely redacted, integral text intended for publication and private reading? Although the *Epistle* has a clearly identifiable introduction, it does not have a list of chapters that appears at the beginning whose order is then rigorously followed throughout the work. I suggested above that the discussion of the types of “legislative statement” seemed to foreshadow the work’s organization as a whole, but this congruence is not remarked upon by the author. There are passages, however, in which the author or the interlocutor provides internal references that correspond reasonably well, though not always exactly, to the actual organization of the work’s contents (e.g., paras. 39, 125, 181–2, 256, 433, 568, 726, and 728). So, although the *Epistle* may not exhibit all the features of the kinds of integral texts that were produced by those authors who wrote later in the third/ninth centuries, its content exhibits a high degree of coherence and its form a discernible deliberateness and clear relationship to that content. Using the criteria developed by Gregor Schoeler for analyzing the character of early Arabic writings, the *Epistle* comes close to being a *syngramma*; according to Schoeler, *syngrammata* are “actual books, composed and redacted according to the canon of stylistic rules and intended for literary publication,” but because the *Epistle* was likely intended for a restricted audience of students, it remains “literature of the school.”³² The early date of the *Epistle* in the context of written cultural production in Arabic more generally and, presumably, the need to forge a vocabulary for writing about legal theory and legal hermeneutics probably combined to contribute to the text’s linguistic and conceptual difficulty. In any event, a work on theory such as the *Epistle* seems likely to have been intended eventually to become written text.

Finally, it should be noted that the title “*Epistle*” does not seem justified by the work’s contents.³³ There was a well-established epistolary tradition among premodern writers of Arabic, but the *Epistle* is clearly not an “epistle.” This literary fact perhaps encouraged the circulation of narratives in which al-Shāfi‘ī was said to have sent the “old” version of the *Epistle* to a Basran scholar of hadith-reports (and pearl merchant) named ‘Abd al-Raḥmān ibn Maḥdī (d. 198/814) at his request for a book that dealt with certain topics in legal hermeneutics. Another possible explanation for the text’s name is that the underlying Arabic word, *risālah*, means something else in this instance, namely, “introduction.” In the manuscript tradition of the *Kitāb al-Umm*, the *Epistle/Risālah* is usually placed first, so it could have been named *risālah* either because it provided the theoretical introduction to the works that made up the *Umm* or simply because it traditionally occupied the lead position. The use of the term *risālah* to refer to the important introductory chapters of a key contemporaneous text, the Arabic grammar of Sībawayhi (d. ca. 180/798), seems to support the idea that *risālah* means “introduction,” but I have translated the title as “*Epistle*” in accordance with tradition.³⁴

The *Epistle* bequeathed to mature Islamic legal theory a full array of productive technical terms and an initial treatment of many issues that were to be of perennial interest, but its overriding concern with source interaction—harmonization of revealed texts to produce rules—gave way to a more conspicuous concern with epistemology, the negotiation of uncertainty in the divine law, linguistic speculation, and legal and theological polemics. The *Epistle* nonetheless remains a central text in the formation of the Islamic legal tradition and in the Islamic intellectual tradition more generally. For those interested in law across traditions, the *Epistle* offers a remarkable collection of examples of applied legal reasoning and hermeneutical finesse. I have drawn attention above to al-Shāfi‘ī’s skill in harmonizing seemingly irreconcilable texts. The techniques that he uses to do this will be immediately familiar to, and I hope admired by, any

lawyer trained to read and interpret case law. One might also note his ability to read hadith-reports that ostensibly concern problems of positive law as expressing principles of legal theory. For example, al-Shāfiʿī groups together a number of such reports to justify the authority of uncorroborated hadith-reports (see paras. 480–540) and relentlessly deploys the example of the prayer-direction both to justify the necessity of inferential reasoning and to take the sting out of the theological consequences of legal disagreement (see, e.g., paras. 595–6). A great legal mind is easily recognized across cultures and centuries.

THE ENGLISH TRANSLATION

The great scholar of Islamic intellectual history and institutions George Makdisi once told me that the only way to really understand a text was to translate it. How right he was. The text that I have translated here, al-Shāfiʿī's *Epistle*, was the subject of my doctoral dissertation and, several years later, of a book that was a revised version of that dissertation, and I have subsequently written about this subject extensively. I still believe that my conclusions in those publications were fundamentally correct: about what the author of the *Epistle* was saying about legal reasoning, legal interpretation, textual interpretation, and legal epistemology, and also about how his claims concerning those subjects added up to something more, an account of what I have called the architectonics of Islamic law as a whole. I developed my interpretation of the *Epistle* through a careful analysis of the author's discussion of the many individual legal problems that he uses to support his arguments. Some might think that all this preparation would have made the translation of the *Epistle* a relatively simple affair. How wrong they would be.

Although in the course of my studies I translated many passages from the *Epistle*, those translations were directed primarily at specialists, not the general reader. Consequently, their English style was often turgid, to say the least, and frequently interrupted by brackets that revealed the underlying Arabic terms. With this translation,

however, I have started over and, liberated by the presence of a parallel Arabic text in the hardcover edition, attempted to render the *Epistle* in a way that will read naturally in English. Having said that, the text is a difficult read in Arabic: the syntax is unusually involved, the analyses are sometimes truncated to the point of incomprehensibility, and principles of interpretation are mostly demonstrated rather than explained. These features of the text constitute irreducible challenges to both the translator and the nonspecialist reader. What it would mean for such a text to “read naturally” in early twenty-first-century English is not entirely clear.

The *Epistle* has been translated in full twice previously, in both English and French, and two partial translations also exist in English and French. Majid Khadduri’s 1961 English translation was a brave undertaking, since the study of Islamic legal theory in the West was barely underway.³⁵ Khadduri decided to omit the poetry (though there is not much) and, more interestingly, felt free to rearrange the text in ways that conformed to his own preconceptions of how it should be organized.³⁶ He also included a useful list of transmitters of hadith-reports as an appendix. His translation continues to be reprinted and cited.

The 1972 partial translation by Philippe Rancillac rendered the second half of the text into French. Rancillac’s decision to translate only the text’s second half probably stems from the field’s strong interest in the theological relevance of the terms and concepts discussed therein—epistemology (*ilm*), consensus (*ijmāʿ*), legal interpretation (*ijtihād*), analogy (*qiyās*), and subjective interpretation (*istihsān*)—and its relative lack of interest in the techniques of textual interpretation that take up the text’s first half. For me, the most important part of the book is its first half, in which al-Shāfiʿī explains the architecture of the divine law and offers techniques for interpreting revealed texts that support his characterization of the law’s structure as a divinely planned, seamless whole.³⁷ Khalil Semaan’s translation of the *Epistle*’s chapter on abrogation (*naskh*) is couched in an archaizing English idiom, and it is not entirely clear

from his introduction why he chose only to translate the one section. The more recent full French translation by Lakhdar Souami is nicely annotated and has a glossary of Arabic terms. Like Khadduri, Souami has a useful introduction and notes that give helpful background to the *Epistle's* legal polemics.³⁸

I have freely and shamelessly consulted all of the above works in preparing this translation. The text is difficult and its difficulties are no doubt reflected in the shortcomings of my own translation. However, in my view all the previous translations suffer from a common ill: none of the translators seems to feel that the *Epistle* offers a coherent vision of the law. That is, none has an interpretation of the work as a whole, which I suspect reflects their view—nowhere stated outright, but perhaps implied in their introductions—that al-Shāfi'ī did not really have any coherent vision of the law or at least that he did not aim to communicate such a view in his *Epistle*. I have argued elsewhere at length that the *Epistle's* main point is the portrayal of the Qur'an and Prophetic Practice as intensely complementary and coherent by divine plan, and I have attempted to demonstrate this point above in my summary and explanation of the *Epistle's* contents. I hope that it comes through in the translation.

A few remarks about my procedures of translation: I have tried to find equivalents for Arabic technical terms that are as productive in English as the underlying terms are in Arabic. The most important of these appear in my summary of the *Epistle's* contents above. I hope that these terms help to give the work as a whole the conceptual and intellectual coherence in English that it has in Arabic. It is not possible to achieve complete consistency in regard to such terms without making the translation wooden, but I have gone as far as I think I dare in that regard. I have felt free to depart from the literal Arabic in all kinds of ways, as dictated by English style and readability. These include freely substituting singulars for plurals and vice versa, never hesitating to replace pronouns with their referents and vice versa, changing nouns from definite to indefinite and vice versa, replacing verbs with gerunds and vice versa, changing

tenses as needed, and fleshing out Arabic phrases by adding words as necessary. I have almost never noted such departures from the literal Arabic text.

Much of the *Epistle* proceeds in the form of a dialogue, as exchanges between al-Shāfi‘ī and a hypothetical interlocutor. I have used quotation marks for the interlocutor’s discourse and also for hypothetical objections entertained by both the interlocutor and al-Shāfi‘ī. I have not put al-Shāfi‘ī’s statements of his own views, even in such dialogues, in quotation marks but have left them as a kind of internal monologue, since the interlocutor, even if based on actual opponents in debates, is a literary device, and al-Shāfi‘ī’s views form a part of his own written work on legal theory.

In the many hadith-reports that are quoted, I have used quotation marks where there is a dialogue or where it is otherwise clear from the text that someone’s speech is being quoted, but I have omitted them if the hadith-report contains no dialogue and is presented as an impersonal, third-person narrative. A special problem is presented by the discourse marker “he said” (*qāla*) in Arabic. In the *Epistle* this marker occurs in two forms. There is the fuller phrase “al-Shāfi‘ī said” (*qāla al-Shāfi‘ī*) and then simply “he said,” which can introduce the speech of either al-Shāfi‘ī or his interlocutor. I have retained all instances of the former, but I have felt free to ignore the latter, and also to vary translations of the verb *qāla* (“to say”) as needed, and to insert English dialogue markers (e.g., “he responded”) where there is no corresponding occurrence of *qāla* in Arabic. It is confusing that some of the interlocutor’s discourse is introduced with the phrase “al-Shāfi‘ī said,” but the use of quotation marks for the interlocutor’s speech and the use of additional discourse markers in English always clarify when the interlocutor is “speaking.”

I have translated all the hadith-reports myself. For the many citations of the Qur’an, I have adapted the translation of Alan Jones, but with US spelling and, more importantly, frequent modifications

whenever they seemed dictated either by the logic of al-Shāfiʿī's discussion or by the need for additional clarity in general. I have reproduced Qur'an quotations as they appear in Shākir's edition, including instances in which he has fleshed out those quotations that are, as he signals in his notes, abbreviated in the Rabīʿ manuscript.

It may amuse readers to learn that the hundreds of footnotes to the translation represent my attempt to keep explanatory notes to the bare minimum needed for a nonspecialist to make sense of this text. Even so, for the nonspecialist reader, the unfamiliar subject matter will pose challenges. A large share of the notes are citations to the Qur'an passages that appear in the text. Otherwise, the notes include occasional explanations of legal doctrine, attempts to clarify or signal difficult points in the text, and a few brief identifications of matters mentioned in the text. Although many of al-Shāfiʿī's discussions of individual problems of positive law presuppose a knowledge of the background of polemics about legal doctrine between al-Shāfiʿī, Mālik, and the disciples of Abū Ḥanifah, I have not generally supplied details about these arguments in the notes unless I judged that they were necessary to make sense of the discussion. Supplying such background information in full might well have doubled the size of this book. Both Souami and Khadduri occasionally give brief references to the significance of these polemical contexts.

Persons and terms in the text that are likely to be unfamiliar to nonspecialists are listed and briefly explained in the glossary of names and terms. For the spellings of transmitters' names, I relied especially heavily on Ibn Ḥajar al-ʿAsqalānī's (d. 852/1449) *Tahdhīb al-tahdhīb* (God bless Ibn Ḥajar!) and the other specialist works, both primary and secondary sources, found in the bibliography. For the dating and identification of events during the Prophet's lifetime, I relied on the relevant volumes of the translation of al-Ṭabarī's *Tārīkh al-rusul wa-l-mulūk*, Ibn Hishām's *Al-Sīrah al-nabawīyyah*, and Guillaume's translation of Ibn Ishāq's *Sīrah*.

There is an index of names, terms, and concepts, and a separate index of Qur'an citations. A table in which paragraph numbers in this edition and translation are correlated with Shākir's and 'Abd al-Muṭṭalib's editions of the Arabic text, the Būlāq printing, and the full translations of Khadduri and Souami, as well as the partial translations of Rancillac and Semaan will be available online at the website of the Library of Arabic Literature (www.libraryofarabicliterature.org). It is hoped that the table of editions and translations will facilitate future study, including the inevitable and necessary criticism of this work.

The translation of this difficult text has not been free from moments of anxiety. Translation requires one to stake out a position on what absolutely every last thing in the text means. I have to admit that in several places I have not been able to unravel precisely what the author had in mind, even though I think that I have in most cases understood the overall trajectory of his argument. I have tried to indicate in the notes those passages where I had doubts about my own interpretation; it seems likely that I remain unaware of additional failures of understanding. I am somewhat consoled in such instances by the fact that the two native speakers who previously undertook to translate this text, both scholars of high repute, also encountered occasional difficulties.

NOTES TO THE INTRODUCTION

- 1 Ibn 'Aqīl, *Wāḍih*, 1:103. When two dates are given separated by a backslash, the first date is according to the Muslim calendar.
- 2 Al-Rāzi, *Irshād*, 142.
- 3 Coulson referred to al-Shāfi'ī that way in the title to chapter 4 of his *History of Islamic Law* ("Master Architect: Muḥammad Ibn-Idrīs ash-Shāfi'ī"). A critical reassessment is offered by Hallaq, "Was al-Shafi'i the Master Architect . . . ?," and doubts have also been expressed by Zysow, *Economy of Certainty*, 2; Reinhart, *Before Revelation*, 14; and El Shamsy, *Canonization*, 5–7.
- 4 See, e.g., Kamali, *Principles*, 19–20 (about 640 verses); Nyazee, *Islamic Jurisprudence*, 161 (600 verses); Coulson, *History of Islamic Law*, 12 (600 verses, of which 80 are strictly legal).
- 5 Ibn Hishām, *Sīrah*, 1:501–4; trans. Guillaume, *Life*, 231–33. From its placement in Ibn Hishām's *Sīrah*, it likely dates to ca. 1/622 or shortly thereafter and in any event to before the Battle of Badr in 2/624. It has been proposed, however, that the so-called constitution consists of several documents with different dates. For a recent assessment, see Lecker, "Constitution of Medina".
- 6 On early Meccan jurisprudence, see generally Motzki, *Origins of Islamic Jurisprudence*.
- 7 Hallaq, in his *Origins and Evolution*, emphasizes the importance of the judiciary for early Islamic law.
- 8 Hadith-reports, often referred to as "traditions" in Western scholarship, generally consist of a chain of transmitters reaching back to Muḥammad or one of his contemporaries, followed by a short

- narrative that involves Muḥammad somehow. A good example that appears early can be found at para. 69.
- 9 On al-Shāfiʿī's life, see the recent authoritative biography by Kecia Ali, *Imam Shafi'i*.
 - 10 On this jurist and his family, see Brockopp, *Early Mālikī Law*.
 - 11 On these two trends, respectively, see Melchert, *Formation of the Sunni Schools*, chapter 1; Melchert, *Ahmad ibn Hanbal*; and El Shamsy, *Canonization*, chapter 1.
 - 12 For the significance of this characterization, see Hallaq, *History of Islamic Legal Theories*, 31, and Melchert, *Formation of the Sunni Schools*, 70–71.
 - 13 On these institutions, see generally Melchert, *Formation of the Sunni Schools*, and on the early Shāfiʿī school, see El Shamsy, *Canonization*.
 - 14 See El Shamsy and Zysow, “Al-Buwayṭī's Abridgment.”
 - 15 Al-Zarkashī, *Al-Baḥr al-muḥīṭ*, 1:7.
 - 16 On these two authors' criticisms of al-Shāfiʿī, respectively, see Lowry, “Some Preliminary Observations,” 514–19, and Jackson, “Setting the Record Straight.”
 - 17 I use “Prophetic Practice” (“Practice” in upper case) for the idea of Prophetic Practice as a whole, but “Prophetic practice” (“practice” in lower case) for individual such practices.
 - 18 As opposed to primary rules of obligation. See generally Hart, *Concept of Law*.
 - 19 Hallaq is a strong proponent of this view, *Shari'ā*, 72–78.
 - 20 For a sampling of the various possible approaches to Islamic legal theory, see, in addition to the works by Hallaq: Makdisi, *Rise of Colleges*; Reinhart, *Before Revelation*; and Zysow, *Economy of Certainty*, all of which emphasize, though in different ways, the importance of the theological debate in shaping the genre.
 - 21 For a brief summary of some of these differences, see Lowry, *Early Islamic Legal Theory*, 359–68.
 - 22 The summary offered in the following paragraphs is also designed as an introduction to the main concepts and technical terms used in the *Epistle* and how they are usually rendered into English.
 - 23 Especially Schacht in his *Origins of Muhammadan Jurisprudence*.

- 24 El Shamsy, “From Tradition to Law,” 10.
- 25 The term “mission-topos” was first coined by Cook. See *Early Muslim Dogma*, 7.
- 26 The first discussion of the legislative statement (paras. 17–28) uses this four-part division, but the more detailed discussion (paras. 20–49) uses a five-part division achieved by dividing the second kind of legislative statement—that produced jointly from the Qur’an and accounts of Prophetic Practice—into two subtypes, one in which Prophetic Practice merely echoes Qur’anic pronouncements and one in which it clarifies such pronouncements.
- 27 See Lowry, *Early Islamic Legal Theory*, 319–57.
- 28 The term “subjective reasoning” captures the pejorative sense that the Arabic word *istihsān* has for al-Shāfi‘ī, but it does not really do justice to the positive connotations that the term has for Ḥanafī and other jurists. For a Ḥanafī perspective, see Nyazee, *Islamic Jurisprudence*, 231–36.
- 29 See Graf, *Verhandeling*, 8; Burton, *Sources of Islamic Law*, 1–8; Lowry, *Early Islamic Legal Theory*, 58–59.
- 30 On the importance of notions of ambiguity in the emergence of Islamic legal theory, see generally Vishanoff, *Formation of Islamic Hermeneutics*.
- 31 See Makdisi, “Juridical Theology,” 41.
- 32 Schoeler, *Genesis of Literature in Islam*, 21, 76.
- 33 As noted by Cook, *Early Muslim Dogma*, 52.
- 34 Schoeler, *Genesis of Literature in Islam*, 88–89. Stewart has made a particularly convincing case for translating *risālah* in this and other early works on legal theory as “introduction” in “Muḥammad b. Jarīr al-Ṭabarī’s al-Bayān,” 334–35.
- 35 For this reason, Khadduri’s effort was gently criticized as premature. See Makdisi’s review in *Muslim World*.
- 36 See Khadduri’s introduction, *Islamic Jurisprudence* at 53, and my comments in Lowry, *Early Islamic Legal Theory*, 372–86.
- 37 Which is not at all to deny the inherent interest of the work’s second half. It should be noted that since the 1980s, the field’s interest in

legal theory as a topic deserving of study in its own right has grown steadily, and now monographs and entire conferences are devoted to the subject. The earliest serious studies of Islamic legal theory were undertaken by the French scholar Robert Brunschvig. See his *Études d'islamologie*.

- 38 Another short work by al-Shāfi'ī on legal hermeneutics, *Jimā' al-'ilm* (*The Sum of Religious Knowledge*), has been ably translated by Aisha Musa in her book *Ḥadīth as Scripture*. I have translated excerpts from the introduction to al-Shāfi'ī's lengthiest work on legal hermeneutics, *Ikhtilāf al-ḥadīth* (*Contradictory Hadīth*) in a forthcoming volume edited by Oussama Arabi, David Powers, and Susan Spector, entitled *Islamic Legal Thought: Jurists and Their Works*.

THE EPISTLE ON
LEGAL THEORY

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IN THE NAME OF GOD, MERCIFUL AND COMPASSIONATE

«Praise be to God, Who has created the heavens and the earth 1
and made darkness and light. Yet those who do not believe ascribe
equals to their Lord.»¹ And praise be to God for Whose acts of
grace no one can be thankful save through another act of His grace,
which, through its bestowal on one giving thanks for past acts of
grace, constitutes a new act of grace for which He must be thanked.
Those who seek to describe Him do not capture the magnitude of
His greatness, He Who is as He has described Himself and is above
His creatures' description of Him.² I praise Him as befits His honor
and sublime glory. I, a creature without power or strength save
through Him, seek His assistance. I beseech Him for His guidance,
through which none on whom He bestows it goes astray. I seek His
pardon for what I will do and for what I have already done, a pardon
for one who affirms his own servitude and who knows that none can
forgive his sin or save him, save Him.

I witness that there is no god but God, alone, Who has no part- 2
ner; and that Muḥammad is His servant and Emissary.

God sent Muḥammad while people were of two classes: One 3
class comprised the people of scripture, who exchanged His rulings
for others and disbelieved in God. They concocted a lie that they
fashioned with their tongues, and mixed it together with the truth
that God had revealed to them. He (blessed and exalted) spoke to
His Prophet of their disbelief: «There is a party of them who twist
their tongues with the Scripture, that you may think it to be from

the Scripture when it is not from the Scripture. They say, “It is from God,” when it is not from God. They speak lies against God knowingly.»³ Then He said (sublime His mention): «Woe to those who write the Scripture with their own hands and then say, “This is from God,” so that they may sell it for a paltry price. Woe to them for what their hands have written. Woe to them for what they earn.»⁴ And He said (blessed and exalted): «The Jews say, “Ezra is the son of God”; and the Christians say, “The Messiah is the son of God.” That is what they say with their mouths, conforming to what was said by those who disbelieved before them—may God confound them. How embroiled in lies they are! They have taken their rabbis and monks as well as the Messiah, son of Mary, as lords apart from God—yet they were commanded to serve only one god. There is no God but Him. May He be glorified high above what they associate with Him.»⁵ He (blessed and exalted) also says: «Have you not seen those who were given a portion of the Scripture believing in false gods and idols and saying to those who do not believe, “These are more rightly guided on the way than those who believe”? Those are the ones whom God has cursed. Those whom God curses—you will not find any helper for them.»⁶

- 4 The other class of people disbelieved in God and invented what God had not permitted. With their own hands they erected stones, pieces of wood, and images that they deemed good, and gave them names that they concocted. They prayed to gods whom they served, and if they deemed good others than those they served, they cast the first ones away and with their hands erected yet others whom they served. Those are the Arabs, and a group among the non-Arabs followed the same path, worshipping whatever they deemed good—fish, beasts, stars, fire, and more. God spoke to His Prophet of an excuse given by some of those who worshipped other than Him, and who belonged to this class. He (sublime His praise) related the following from them: «“We found our fathers following a religion, and we are following on their traces.”»⁷ God (blessed and exalted) also said: «And they said, “Do not forsake your gods and do not

forsake Wadd nor Suwā‘ nor Yaghūth nor Ya‘ūq nor Nasr.” And they have led many astray»⁸ and «Mention Abraham in the Book. He was a true friend of God, a prophet, when he said to his father, “O my father, why do you worship something that cannot see nor hear nor be of avail to you in anything?”»⁹ And God said: «Recite to them the story of Abraham: When he said to his father and his people, “What do you worship?” They said, “We worship idols, and we shall continue to cleave to them.” He said, “Do they hear you when you call? Or do they benefit you or harm you?”»¹⁰ He also said this about all of them together, reminding them of His acts of grace, informing them of their general sinfulness, and bestowing that grace on those of them who believed: «And recall God’s blessing to you: when you were enemies and He brought reconciliation to your hearts, and by His blessing you became brothers; and you were on the lip of a pit of Fire and he saved you from it. Thus God makes His signs plain for you, that you may be guided.»¹¹

Before God saved the people of disbelief through Muḥammad, 5 they were, in both their individual differences and shared similarities, united only by the most grievous things: disbelief in God and invention of what God had not permitted. May He be exalted far above what they say. There is no God but He, praise be unto Him, Lord and Creator of all. Those among them who lived did so just as He described their condition in life: by word and deed incurring their Lord’s displeasure and ever-increasing in disobedience. Those who died did so just as He described their words and deeds: they went to His punishment.

But when the foreordained time came,¹² and then God’s decree 6 to manifest His religion that He had chosen came to pass, after disobedience to Him, which displeased Him, had become prevalent, He then opened the gates of His heavens with His mercy. Similarly, His decree remained in effect in His foreknowledge at the time when His decree was revealed in bygone ages. He (blessed and exalted) said: «The people were one community. Then God sent the prophets as conveyors of good tidings and as warners.»¹³ His

selection—the Chosen for His revelation, the elect for His mission, preferred over all His creatures through the opening of His mercy and the sealing of prophethood, sent with the most all-encompassing mission in comparison with any sent before him, whose mention is exalted and conjoined with that of God in this world and whose intercession is accepted in the next world, most excellent of His creatures, most complete in every virtue that pleases Him in religion and this world, and the best of them in lineage and abode—was Muḥammad, His servant and Emissary. He apprised us and His creatures of His particular acts of grace, which were general in their benefits, in both religion and this world, when He said «An emissary has come to you from among yourselves—what you suffer is grievous to him. He is anxious over you, and kind and compassionate to the believers»¹⁴ and «for you to warn the mother of towns and those around it»¹⁵ and «Warn your tribe, your near relations»¹⁶ and «It is indeed a reminder for you and your people; and you will be questioned.»¹⁷

7 Al-Shāfi‘ī said: Ibn ‘Uyaynah transmitted a report to us from Ibn Abī Najīḥ, from Mujāhid, concerning His saying “It is indeed a reminder for you and your people.” He said: “It was asked, ‘From where is this man?’ ‘From the Arabs.’ ‘From which Arabs?’ ‘From the tribe of Quraysh.’”

8 Al-Shāfi‘ī said: What Mujāhid said in that regard is clear in the verse itself, and thus Revelation renders additional exegesis unnecessary. He (sublime His praise) restricted the warning to his tribe and near relations, but made it apply unrestrictedly to all creatures after them. He raised up the reputation of God’s Emissary by means of the Qur’an and then restricted the warning to his tribe, since He sent him and said «And warn your tribe, your near relations.»¹⁸

9 A certain Qur’an scholar claimed that God’s Emissary said: “O sons of ‘Abd Manāf! God has sent me and told me to ‘warn your tribe, your near relations,’ and you are my near relations.”

Al-Shāfi‘ī said: Ibn ‘Uyaynah informed me from Ibn Abī Najīh, 10
from Mujāhid, concerning His saying «And have We not raised for
you your reputation?»:¹⁹ “I am not mentioned without you being
mentioned along with Me: ‘I witness that there is no god but God
and that Muḥammad is God’s Emissary.’”²⁰ This means, though God
knows best, that he is mentioned in conjunction with faith in God
and the call to prayer. It could possibly mean that he is recollected
when one recites the Book, and when one acts obediently and
refrains from disobedience.

May God bless our Prophet Muḥammad whenever he is men- 11
tioned by the devout or forgotten by the heedless. May he bless him
more excellently, abundantly, and purely than any other of His crea-
tures among the bygone generations and the generations to come.
May He purify us and you by having us invoke blessings for him
as excellently as He does for anyone from His community through
such blessings. Peace be upon him and God’s mercy and blessings.
May God reward him on our behalf as excellently as He has done for
any prophet whom He sent on behalf of the people to whom he was
sent. God has rescued us from demise through him and placed us in
«the best community brought forth for the people,»²¹ adherents of
His religion, the religion of which He approved and for which He
elected His angels and those of His creatures whom He has graced.
No act of grace has touched us—whether outwardly or inwardly,
and through which we attain benefit in religion and this world or
have averted from us what is evil in one or both of them—of which
Muḥammad was not the cause, the leader to its blessing, the guide
to its proper route, the one who protects us from perdition and the
sources of evil as distinct from the proper route, who makes aware
of the paths that lead to perdition and provides sincere advice about
them, in the form of both guidance and warnings. May God bless
Muḥammad and his family as He blessed Abraham and his. For God
is praiseworthy and splendid.

12 He revealed His Book to him, and said: «Truly it is a mighty Book. Falsehood cannot come to it from before it or from behind it, a Revelation from One who is Wise and Praiseworthy.»²² Thus did He convey them from unbelief and blindness to light and guidance. In it He clarified what He had made lawful, graciously making it allowable for His creatures, and what He had made unlawful, since He knows best about the benefits for them in the next world and in this one of their refraining from it. He tested their obedience by subjecting them to religious obligations consisting of words and deeds, and of their refraining from prohibited things from which He shielded them. He rewarded them for their obedience with eternal life in Paradise, and with salvation from His vengeance, in accordance with the vast extent of His grace (sublime His praise). He also apprised them of the consequences He imposed on those who disobeyed Him, in contrast to the consequences he ordained for those who obeyed Him. He admonished them with reports about those who had gone before, who had had even more wealth and sons, whose lives were longer, and whose past works more admired. Those persons delighted in their share of success in this world, but then He let them taste their fates, short of their hopes, and his punishment descended upon them when their appointed times came. He did all this so that those whom He admonished might consider things right away, understand the message with utter clarity, come to their senses before the onslaught of heedlessness, and act before it is too late, when no sinner will receive favor and no ransom will be accepted: «On the day when every soul will find itself confronted with whatever good it has done and whatever evil it has done, it will wish there to be a distant period between itself and that day.»²³

13 Everything that He revealed in His Book (sublime His praise) is mercy and proof. Those who know it know it; those who ignore it are ignorant of it. Whoever is ignorant of it will not come to know it; whoever comes to know it will not be ignorant of it.²⁴

. . .

In regard to knowledge, people have different degrees. Their station in relation to knowledge depends on their rankings in regard to how much of it they have acquired. It is necessary for those who seek knowledge to expend their utmost effort in amassing it, to be patient in the face of every obstacle that stands in the way of its acquisition, to have pure intentions toward God in attaining such knowledge, whether they attain it from an explicit text or by means of inference, and to be desirous of God's assistance in regard to it. No one attains blessings except through His aid. Whoever attains knowledge of God's rulings in His Book, whether in the form of an explicit text or by means of inference, and whomever God enables to express opinions and act in accordance with what he has learned will win favor in his religion and his worldly existence. His doubts will be dispelled, wisdom will illuminate his heart, and he will become entitled to the rank of Imam, a position of religious leadership. 14

We ask God—Bestower of acts of grace before they are deserved, Who continues to bestow them on us though we fall short in rendering thanks to Him as He has required, and Who placed us in «the best community brought forth for the people»²⁵—to grant us understanding of His Book and then of the Practice of His Prophet, to grant us words and deeds by which we may satisfy our debt to Him, and to require of us ever more acts of devotion above and beyond those that are required. 15

. . .

Al-Shāfi'ī said: Nothing befalls any adherent of God's religion without there being in the Book of God an indication of the path of guidance concerning it. God (blessed and exalted) said: «A Book which We have sent down to you that you may lead the people from darkness into light, with the permission of their Lord, to the path of the Mighty and Laudable.»²⁶ He also said: «And We have sent down to you the reminder for you to make clear to men what has been sent down to them and so that they may reflect.»²⁷ Moreover, He said: «We have sent down to you the Book as an explanation 16

of everything and a guidance and a mercy and good news to those who submit»²⁸ and «And thus We have inspired you with a Spirit of Our command. You did not know what the Book was nor the Faith, but We made it a light, by which We guide such of Our servants as We wish. You guide to a straight path.»²⁹



CHAPTER ON THE MODALITIES OF LEGISLATIVE STATEMENTS

Al-Shāfi‘ī said: “Legislative statement” is a term comprising several convergent basic meanings which, however, diverge in their details. The lowest common denominator among those convergent and yet divergent meanings is that such a statement is directed to whoever is addressed by it among those in whose language the Qur’an was revealed. Those meanings are very close in import for such persons, even though some legislative statements exhibit a stronger emphasis than others. They are quite disparate, however, for those ignorant of the Arabs’ language. 17

Al-Shāfi‘ī said: The sum total of legislative statements that God has provided for His creation in His Book—concerning those obligations to which He has subjected them, according to what He has foreordained—are several: 18

One type includes what God has stated in the form of an explicit text, like His general obligations, to wit: that they must perform prayers, give alms, perform the Pilgrimage, and fast; and that He has forbidden sexual indecencies, whether committed openly or in secret.³⁰ He has also provided explicit texts concerning unlawful sexual intercourse, wine-drinking, and the eating of carrion, blood, and swine flesh. And He has clarified for them how to perform the obligation of ablutions, along with other matters that He has explained in the form of explicit texts.³¹ 19

Another type of legislative statement includes those matters the obligation of which He has affirmed in His Book and then explained 20

how they are to be performed through the words of His Prophet, like the number of prayers, alms and the times when they fall due, and other obligations that He has revealed in His Book.

- 21 Another type of statement includes those things for which God's Emissary has established a practice and in respect of which God has provided no explicit text of a rule. In His Book, God has imposed the obligation to obey His Emissary and to abide by his rulings. Thus, whoever accepts something from God's Emissary accepts it by reason of God's obliging him to do so.
- 22 Yet another type of legislative statement includes those things in respect of which God has imposed on His creatures the obligation to engage in legal interpretation in order to arrive at an answer. He tests their obedience in regard to legal interpretation just as He tests their obedience in regard to the other things that He has imposed on them. For God (blessed and exalted) says: «We shall try you until We know those of you who strive hard and are steadfast, and until We test your tidings.»³² He also says «So that God might test what is in your breasts and prove what is in your hearts»³³ and «Perhaps your Lord will destroy your enemy and make you successors in the land and see how you act.»³⁴
- 23 Al-Shāfi'ī said: He made them face the prayer-direction, toward the Sacred Mosque, and said to His Prophet: «We see you turning your face about in the sky, and so We make you turn to a prayer-direction that will please you. Turn your face toward the Sacred Mosque. Wherever you may be, turn your faces toward it»³⁵ and «From wherever you approach, turn your face toward the Sacred Mosque; and wherever you may be turn your faces toward it, so that the people may not have any argument against you.»³⁶
- 24 Thus, He indicated to them (sublime His praise) that if they were distant from the Sacred Mosque itself, a correct result would be arrived at through interpretation, an obligation which He imposed on them in conjunction with the intellects that He placed in them, which can distinguish between things and their opposites, and

those signs that He set up for them apart from the Sacred Mosque itself, toward which He had commanded them to face. So He said: «He placed the stars for you, for you to be guided by them in the darkneses of land and sea»³⁷ and «And signs. And men can guide themselves by the stars.»³⁸

These signs consisted of mountains, night, and day; winds of well-known names even though their directions might differ; and the risings of the sun, moon, and stars, risings whose locations within the heavens were well known. God obligated them to use interpretation in order to face toward the Sacred Mosque, indicating its direction for them as I have just described. And so as long as they engaged in such interpretation, they did not abandon God's command (sublime His praise). He did not allow them to pray in whatever direction they wished when the Sacred Mosque itself lay distant from them. 25

Thus did He inform them of His decree: «Does Man think he will be left without guidance?»³⁹ “Without guidance” means to be neither commanded to do something nor prohibited from doing something. 26

This all indicates that no one other than God's Emissary may pronounce on the law except by means of inference, as I have just described, or on what makes someone just such that they may be appointed a witness, or on the legal equivalent of game wrongly killed. Neither may anyone express opinions based on subjective interpretation, since to do so is to pronounce according to mere preference, something that is simply invented and not based on a prior example. 27

Included in the foregoing category are rulings in regard to which God (blessed and exalted) indicated for His creatures the way to determine a correct result based on appearances only. Thus, He made them face in the direction of the Sacred Mosque for prayer, and set out signs that they could use to guide themselves in facing toward it. He also commanded them to appoint two just persons 28

as witnesses. A just person is one who practices obedience to God. They had ways to know when a person was just and when not.⁴⁰ This has all been discussed in its proper place, and I have only mentioned it here in a general way, hopeful that it will indicate the underlying point for this and similar issues.



CHAPTER ON THE FIRST KIND OF LEGISLATIVE STATEMENT

- 29 God (blessed and exalted) said, concerning one who makes both pilgrimages at the same time: «Whoever combines the Minor Pilgrimage with the Major Pilgrimage shall give whatever offerings are convenient. Those who do not find any—a fast of three days during the Major Pilgrimage and seven when you have returned; that is ten complete days in all. That is for those whose families are not present at the Sacred Mosque.»⁴¹ It is clear to those addressed by this verse that the fast is the three days during the Pilgrimage and the seven during the return, making ten complete days. God said: “That is ten complete days in all.” This phrase could be an additional clarification, or it could be that He informed them that three, when added to seven, makes ten complete days in all.
- 30 God also said: «And when We made an appointment of thirty nights for Moses and rounded them off with ten more; and the full period of his Lord was forty nights.»⁴² It is quite clear to those addressed by this verse that thirty and ten makes forty nights. His saying “forty nights” could have either of the meanings that the preceding verse had: that if thirty are added to ten they make forty, or that the additional information could be for clarification.
- 31 In addition, God said: «Fasting is prescribed for you, as it was prescribed for those who were before you, so that you may be

God-fearing. For a fixed number of days. Those of you who are sick or on a journey, a number of other days»⁴³ and «The month of Ramadan, in which the Recitation was sent down as a guidance to the people and as clear proofs of the guidance and of the salvation. Let those of you who witness the month fast during it. Those of you who are sick or on a journey, a number of other days.»⁴⁴ He obligated them to fast, then clarified that it was for a month—a month for them was the period of time between two crescent moons, which might be thirty or twenty-nine days. So the indication in this verse is like the indication in the other two verses, but in the two previous verses there was an additional clarification of the sum of the numbers.

Most likely, the point of the additional clarification is to indicate the sum of the numbers, seven and three and thirty and ten, respectively. It is considered an additional clarification because they already know what those two numbers and their sum are, just as they already know what the month of Ramadan is. 32



CHAPTER ON THE SECOND KIND OF LEGISLATIVE STATEMENT

God (blessed and exalted) said: «When you rise to pray, wash your faces and your hands up to the elbows, and wipe your heads and wash your feet up to the ankles. If you are polluted, purify yourselves»⁴⁵ and «Nor when you are polluted, save when you are traveling.»⁴⁶ 33

The Book of God provided a legislative statement concerning ablutions—separately from the topic of cleansing oneself using stones—and also concerning the major washing for substantive ritual impurity.⁴⁷ In accordance with that, the least number of 34

times that one could wash the face and limbs would be once each, though it would also be possible to do it more. Then, God's Emissary explained that ablutions are to be performed once, though he himself performed them three times, thus indicating that the least that one could wash the limbs sufficed, and that the least permissible number of such washings was once. Accordingly, if once suffices, then thrice is optional.

35 Prophetic Practice indicates that three stones suffice for cleansing, and the Prophet also indicated of what ablutions and the major washing consist. He indicated that the ankles and elbows are to be washed, since the verse could mean either that they are the two limits up to which one should wash or that they should be included in the washing. When God's Emissary said, "Woe to the heels lest they suffer Hellfire!" he indicated that they were to be washed, not merely wiped.

36 God said: «To each of his parents one-sixth of what he leaves, if he has a child; but if he does not have a child and his heir is his father, his mother gets a third; but if he has brothers, his mother gets a sixth.»⁴⁸ He also said: «To you is half of what your wives leave, if they have no child; but if they have a child, you get a quarter of what they leave, after any bequest they may have made or any debt. They get a quarter of what you leave, if you have no child; but if you do have a child they receive one-eighth of what you leave after any bequest you may have made or any debt. If a man, or a woman, has no direct heir, but has a brother or sister, each of the two gets a sixth. If there are more than that, they share in a third after any bequest he may have made or any debt that is not prejudicial. This is a charge from God. God is Knowing and Prudent.»⁴⁹

37 God made do solely with Revelation in regard to this issue, and dispensed with other reports. Additionally, however, God has imposed a condition in regard to this, namely that distribution of the estate be subject to bequests and debts, and then another report indicated that bequests were not to exceed one-third of the estate.⁵⁰



CHAPTER ON THE THIRD KIND OF LEGISLATIVE STATEMENT

God (blessed and exalted) said: «Prayer is a prescription at fixed times for the believers.»⁵¹ He also said: «Perform prayer and pay alms»⁵² and «Perform the Major Pilgrimage and the Minor Pilgrimage for God.»⁵³ Then, using the words of His Emissary, He clarified the number of prayers that He obligated them to perform, their times, their specific practices; the amounts of alms and when they are to be paid; and how to perform the Major Pilgrimage and the Minor Pilgrimage, when they are vitiated, when affirmed, when the performance of them varies, and when it is consistent. There are many examples of this type of legislative statement in the Qur'an and accounts of the Prophet's Practice. 38



CHAPTER ON THE FOURTH KIND OF LEGISLATIVE STATEMENT

Al-Shāfi'ī said: Every practice established by God's Emissary concerning something for which there is no relevant scriptural passage—as well as what we have written in this book of ours about God's having bestowed on His servants the opportunity to study the Book and wisdom—indicates that “wisdom” is the Practice of God's Emissary.⁵⁴ This, together with what we have mentioned concerning God's obliging of His creatures to be obedient to His Emissary, and God's clarification of the station in which He put His Emissary 39

in His religion, indicates that the legislative statement of textually explicit obligations is always one of the following varieties:

40 One category consists of statements in the Book, concerning obligations which are utterly clear, and in regard to which nothing else is required in addition to the passage from Revelation that concerns it. Another category comprises those passages in the Book that provide an utterly clear statement of the fact of the obligation in question, in regard to which God has additionally imposed the obligation to obey His Emissary because God's Emissary explains, on God's behalf, how to carry out the obligation, on whom it is imposed, and when certain aspects of it become inapplicable, confirmed, or mandatory. Another category consists of those legislative statements that He made solely by means of His Prophet's Practice, without any explicit scriptural proof-text.

41 All of these are legislative statements in the Book of God. Everyone who accepts obligations from God in His Book accepts the practices of God's Emissary from God by reason of God's imposing on His creatures the obligation to obey His Emissary and to carry out his rulings. Whoever accepts something from God's Emissary accepts it from God because God imposed the obligation to obey him. So, accepting what is in the Book of God and accepting the Practice of God's Emissary both have in common the acceptance of something from God, even though the underlying reasons for such acceptance of these matters from the two of them differ. Thus has God made certain things unlawful, lawful, obligatory, and subject to punishment, all for differing reasons, as He wills (sublime His praise): «He will not be questioned about what He does—but they will be questioned.»⁵⁵



CHAPTER ON THE FIFTH KIND OF LEGISLATIVE STATEMENT

God (blessed and exalted) said: «From wherever you approach, 42
turn your face toward the Sacred Mosque; and wherever you may
be, turn your faces toward it.»⁵⁶ He imposed on them the obliga-
tion, wherever they might be, to turn their faces toward it. “Toward”
in the language of the Arabs refers to its direction. If you say, “I am
heading *toward* something,” it is understood that you are saying “I
am heading right for that particular thing,” that is, “for that very
thing itself.” Similarly, it means “facing it,” “in its direction,” that is,
“I turned to face it,” or “in its direction.” These all have one mean-
ing, though they use different expressions.

Khufāf ibn Nudbah said

43

Who will go as an envoy to tell ‘Amr?

But what use the message sent *toward* ‘Amr?

And Sā‘idah ibn Ju’ayyah said

To Umm Zinbā‘ I say: “Raise up
the breasts of the riding camels *toward* the tribe of Tamīm!”

And Laqīṭ al-Iyādī said

From a direction *toward* your frontiers, terrors overshadow you;
they will wrap you a piece at a time in umbrageous woes.

And another poet said

The unbroken she-camel’s disease has so infected her,
that the eyes’ gaze is drawn *toward* her.

44 Al-Shāfi‘ī said: He means “one faces her with one’s gaze,” “looks directly at her,” and “in her direction.” All of this, and other lines of the Arabs’ poetry, clarify that “toward” a thing means heading toward that particular thing. If it can be seen, then in the correct direction; but if it is occluded, then heading in its direction by means of interpretation, which is the most that is possible.

45 God said: «He . . . placed the stars for you, for you to be guided by them in the darknesses of land and sea»⁵⁷ and «And men can guide themselves by the stars.»⁵⁸ He created signs for them, erected the Sacred Mosque for them, and commanded them to face toward it. Their facing toward it is accomplished by means of signs that He created for them and intellects that He furnished for them and which they use to draw inferences to understand the signs. These are all clear legislative statements, and a grace from Him (sublime His praise).

46 He also said: «Call as witnesses two just men»⁵⁹ and «from those you are satisfied with as witnesses.»⁶⁰ He stated that a just man is the one who acts in obedience to Him, so whomever they consider to act in that way is just, and whoever acts contrary to that is the opposite of just.

47 He also said (sublime His praise): «Do not kill game while you are in the sacred state.»⁶¹ If any of you kill such game intentionally, there must be recompense—the like of what he has killed from his livestock, as two just men from you decide, an offering to reach the Kaaba.»⁶² “The like,” according to the apparent sense, is whatever most nearly resembles it in bodily size. Those Companions of God’s Emissary who discussed hunting game were united in the opinion that it was whatever most nearly physically resembled it. Thus, we look to whatever game animal was killed: whatever livestock animal most nearly resembles it we offer as a sacrifice. “The like” from among livestock cannot possibly mean “of like value”—at least not for those livestock animals that are physically like a game animal—except as a disfavored, non-obvious interpretation. Thus, the apparent and least restrictive meaning is the better of the two, and that is

legal interpretation, which the adjudicator uses to determine what “the like” of something is, by relying on certain indications.

This kind of knowledge provides an indication of what I discussed above, to wit: it is not for anyone to opine about whether something is lawful or unlawful except based on a source of certain knowledge. The sources of such knowledge are, in turn, a report in the Book or of the Prophet’s Practice, consensus, or analogy. 48

The topic of this section is the concept of analogy, because one uses it to seek an indication of the correct prayer-direction, the just person who may be appointed a witness, and the like of the game animal. An analogy is what is sought by means of indications of conformity with a previously identified report, whether in the Book or from Prophetic Practice. That is because the Book and Prophetic Practice furnish signs of the correct answer, the pursuit of which is an obligation, like determining the prayer-direction, who is just, and the like of the game animal, as I have explained above. Such conformity may occur in one of two ways: One is when God or His Emissary forbids a thing or makes it licit, by means of an explicit text, on the basis of a particular rationale. If we find something that is covered by that rationale in a matter for which neither a scriptural prooftext nor a Prophetic practice has provided an explicit rule for precisely that thing, then we make it licit or forbid it because it is covered by the rationale for making the original thing licit or forbidden. The second way is when we find that one thing resembles one of two other things, and we can find nothing else which resembles it more than one of those two other things. In that case, we would bring it into a certain relation with the one of those two things that most closely resembles it, just as we explained in the case of the game animal. 49

. . .

Al-Shāfi‘ī said: Knowledge has two aspects, consensus and disagreement, which are discussed below.⁶³ 50

51 Knowledge of the Book of God comprises all of the following: knowledge that all of the Book of God was revealed only in the language of the Arabs; cognizance of what abrogates and what is abrogated in God's Book; and knowledge of the obligations, inculcation of manners, ethical guidance, and declarations of permissibility contained in His Revelation. It also comprises cognizance of the position in which God put His Prophet, which involves providing clarifying statements on God's behalf regarding those obligations that He confirmed in His Book and which He clarified using the words of His Prophet; what He intended by His obligations; whom He intended—all of His creation or only some of them; and the obligation He imposed on people to obey the Prophet and abide by his commands. Also included is cognizance of the parables which He coined to indicate that one should obey Him and which clarify that one should avoid sinful disobedience, and not be heedless of attaining one's appropriate share, or even more, of the abundant bounty that God may provide.

52 Scholars should only express opinions about things that they know. Yet some have discussed such knowledge who would have been better off, and safer, had they refrained from doing so, God willing.

53 One such person said: "The Qur'an contains both Arabic and non-Arabic." The Qur'an itself, however, indicates that there is nothing whatsoever in the Book of God that is not in the language of the Arabs. The person who expressed this opinion found others who accepted it unquestioningly from him, omitting either to ask him about his proof for it or to ask others who disagreed with him about other possibilities. As a result of this unquestioning acceptance, many were misled—may God forgive both us and them. Perhaps whoever said that the Qur'an contains something besides the language of the Arabs, and whose view on this question was accepted, came to the conclusion that the Qur'an contained its own idiosyncratic language of which some of the Arabs were ignorant.

In fact, the language of the Arabs is the most vast of all languages 54
in scope and contains the most words. We know of no one except a
prophet who could have a comprehensive knowledge of all of it, but
no part of it escapes the entirety of its speakers such that there not
be among them someone who knows that part.

Knowledge of Arabic among the Bedouin is like knowledge of 55
the Prophet's Practice among legal scholars. We know of no one
man who has collected all those practices without some portion of
them eluding him. If the knowledge of the entirety of scholars were
gathered together, then those practices would all be there. If the
knowledge of each scholar is considered individually, then some
of them would elude each one, but those that eluded that scholar
would be found with other scholars.

However, scholars occupy different levels in regard to knowl- 56
edge. On one level are scholars who have amassed the majority
of it, even though some of it might elude them. On another level
are scholars who have amassed less than some others. The fact
that a small portion of Prophetic practices eludes those who have
amassed the majority of them is not an indication that knowledge
of that small portion should be sought from those who occupy a
lower level than they among the scholars, but rather that what has
eluded them should be sought from their own peers, so that one
might discover the entirety of the practices of God's Emissary (may
my father and mother be his ransom). Only among the entirety of
scholars can one find comprehensive knowledge of such practices,
while individual scholars attain different degrees in regard to what
they comprehend thereof.

Similar to this is the situation with the Arabic language among 57
specialists and commoners. No part of it escapes them as a whole,
and it is not to be sought with others. Only those who have received
it from the Arabs know it, and no one shares in it with them unless
he has depended on them to learn it. Whoever receives it from them
becomes one of the speakers of their language.

58 Others are dissociated from it simply because they have omitted to study it, but if they were to take it up, they would come to be among its speakers. Knowledge of the majority of the language among the majority of the Arabs is more common than knowledge of the majority of Prophetic practices among the majority of scholars.

59 If someone were to say: “We find some non-Arabs who speak some Arabic.” That is possible, as I discussed above, as a result of studying Arabic with the Arabs. But if such persons are not among those who have studied it with them, then they speak but a little of it, and whoever speaks only a little is dependent on the Arabs in regard to it. We do not deny that—whether an expression is used after being learned, or uttered as an original part of the language—the non-Arab language or part of it might correspond to Arabic. This is just as some small part of the languages of non-Arabs, whose speech differs greatly among themselves, might agree with each other despite the distance between their lands, the differences between their languages, and the remoteness of the ties between them and those of them to whose language their own may partly correspond.

60 If someone were to ask: “What authority can you cite to support the claim that God’s Book is purely in the language of the Arabs, nothing else being mixed in with it?” The authority for that is in the Book of God. God says: «We never sent any emissary except with the language of his people.»⁶⁴

61 If someone were to say: “The emissaries before Muḥammad were sent specifically to their own people, but Muḥammad was sent to absolutely everyone. So, it is possible either that he was sent using the language specifically of his people—whereby it is incumbent on all people generally to learn his language, or as much of it as they are able—or that he was sent with those other languages belonging to everyone. Is there some indication that he was sent with the language of his own people in particular and not the languages of the non-Arabs?”

Al-Shāfi‘ī said: Many passages in God’s Book clearly indicate this. Since languages differ such that some people cannot understand each other, then it must be the case that some people are dependent on others, and that superiority resides in the language that sets the standard rather than in that which is subordinate to it. The people most entitled to superiority in regard to language are those whose language is the language of the Prophet. It would be impermissible, though God knows best, for the people who speak his language to be inferior to those who speak a language that differs from his, even in respect of one letter. Rather, every language is inferior to his, and it is incumbent on the adherents of every religion prior to him to follow his religion. God has made that clear in many verses of His book. He said: «It is the message sent down by the Lord of all beings, which the faithful spirit has brought down, upon your heart, that you may be one of the warners, in a clear Arabic language.»⁶⁵ He also said: «Thus have We revealed it as a criterion in Arabic.»⁶⁶ And He said: «Thus have We revealed to you a Qur’an in Arabic for you to warn the mother of towns and those around it»⁶⁷ and «Ḥā Mīm. By the clear Book—We have made it a Qur’an in Arabic, so that you may understand»⁶⁸ and «A Qur’an in Arabic, containing no crookedness, so that they may be God-fearing.»⁶⁹

62

Al-Shāfi‘ī said: He thus established authoritative proof, in every verse we have mentioned, that His Book is Arabic. Then He confirmed that in two verses from His Book, by denying (sublime His praise) that there is any language in it except that of the Arabs. He said (blessed and exalted): «In truth We know that they say, “It is only a mortal who is teaching him.” The speech of the one at whom they hint is foreign, whereas this is clear Arabic speech»⁷⁰ and «If We had made it a foreign Qur’an, they would have said, “Why are its verses not made clear? Foreign and Arabic?”»⁷¹

63

Al-Shāfi‘ī said: He made the extent of His acts of grace known to us by means of the station that He granted to Muḥammad specifically in relation to us, and thus He said: «An emissary has come to you from among yourselves—what you suffer is grievous to him. He

64

is anxious over you, and kind and compassionate to the believers»⁷² and «It is He who has sent among the common people an emissary from among themselves, to recite His signs to them and to purify them and to teach them the Book and wisdom—previously they were in manifest error.»⁷³ One of the acts of grace that He made known to His Prophet is that He said: «It is indeed a reminder for you and your people.»⁷⁴ Singling out his people for mention together with him in His Book, He also said: «And warn your tribe, your near relations»⁷⁵ and «for you to warn the mother of towns and those around it.»⁷⁶ The “mother of towns” is Mecca, his town and that of his people. He singled them out for inclusion in His Book, grouped them among all those to be warned, and decreed that they, among the entirety of those who were to be warned, be warned in their own language, Arabic, the language of his own people.

65 It is thus incumbent on every Muslim to learn as much of the Arabs’ language as his efforts allow. This is so that he may testify in Arabic that “there is no god but God and Muḥammad is His servant, Prophet, and Emissary”; recite the Book of God in Arabic; pronounce what he is obliged to mention during prayer, to wit, that “God is great”; and comply with the command to speak God’s praise in it, to utter the prayer-formula in it,⁷⁷ and so on.⁷⁸

66 Whatever increases one’s knowledge of the Arabic language—which God made the language of him by whom He sealed prophethood and in which He revealed the last of His Books—is better for one, just as it is incumbent on one to learn to pray and to supplicate during prayer, to perform the pilgrimage to the Sacred House⁷⁹ and perform the required rites while there, to face the direction one is commanded to face, and to be a follower, not one who is followed, in regard to the obligations that are imposed on one or recommended.

67 I have begun with the fact that the Qur’an was revealed in the language of the Arabs and not in others only because one cannot know how to elucidate things known from general passages in the Book if one is ignorant of the vast scope of the language of the Arabs, its many aspects, and the totality of its meanings and their distinctions.

Whoever knows it has had expunged from him those doubts that befall whoever is ignorant of their language. Thus, pointing out to people in general that the Qur'an was revealed in the language of the Arabs in particular is sincere advice to the Muslims. Providing sincere advice to them is, in turn, an obligation that may not be omitted, the attainment of an extra benefit which no one would omit unless he were foolish and had abandoned that in which lies his own good. Combined with this sincere advice to Muslims is an undertaking to elucidate a duty. Undertaking a duty and providing sincere advice to the Muslims constitute obedience to God, and obedience to God brings blessings.

Sufyān reported to us from Ziyād ibn 'Ilāqah, who said: "I heard Jarīr ibn 'Abdallāh say, 'I pledged allegiance to the Prophet on the condition that I be able to give sincere advice to every Muslim.'" 68

Ibn 'Uyaynah reported to us from Suhayl ibn Abī Ṣāliḥ, from 'Aḩā' ibn Yazīd, from Tamīm al-Dārī, that the Prophet said: "Religion is sincere advice, religion is sincere advice, religion is sincere advice: concerning God, His Book, His Prophet, the Muslims' leaders, and the Muslims in general." 69

Al-Shāfi'ī said: God addressed the Arabs in His Book in a way consistent with what they knew about their language's semantic features. Among the semantic features of their language that were familiar to them was its broad scope. It is, moreover, in the nature of God's language that it can be used to address people in a way that seems unrestricted with a readily apparent meaning that is in fact intended as unrestricted and in its apparent sense; the beginning of such a statement can obviate the need for recourse to its ending. There are also statements whose sense seems unrestricted and readily apparent but in which an unrestricted sense together with a partly restricted sense is intended, so that one must make an inference based on part of what is contained in such an address. There are also unrestricted statements whose apparent meaning is intended to be understood as restricted. Then, there are also statements which are understood from context to mean something other 70

than their apparent meaning. Knowledge of all of this is found in the beginning, middle, or end of a given utterance. The speech of the Arabs may begin in such a way that its first expression clarifies its end, just as it may begin in such a way that its final expression clarifies its beginning. They may speak about something by making its meaning known through paraphrase, without clarifying the underlying wording, just as one may make something known by means of a gesture. The Arabs consider this the very pinnacle of eloquence, because only the learned among them are able to do it, and not those who are ignorant among them. They may also call one thing by many names and use one name in many different senses.

- 71 These aspects, which are brought together as I have described in the knowledge of those among them who are experts in the language, are very clearly known to them—even though the bases for such knowledge may differ—and yet unknown to others. Whoever is ignorant of that aspect of their language—and the Book was revealed in their language and also the Prophet’s Practice—and yet undertakes to express opinions about knowledge of it has done so in regard to something of which he is partly ignorant. If someone who undertakes something of which he is ignorant and of which he has no firm cognizance conforms to what is correct for reasons that he does not understand, then he conforms in a way that is not praiseworthy, though God knows best. Such a person is not excused for his mistakes when he addresses a topic about which he cannot tell with certainty whether he is right or wrong.



CHAPTER EXPLAINING WHAT IS REVEALED IN THE BOOK AS UNRESTRICTED, AND INTENDED AS UNRESTRICTED, BUT ALSO PARTLY RESTRICTED

God (blessed and exalted) said: «God is the Creator of everything. 72
He is the Guardian over everything.»⁸⁰ He also said that He «cre-
ated the heavens and the earth.»⁸¹ And He said: «There is no beast
on the earth but its sustenance depends on God.»⁸² This is unre-
stricted; there is nothing restricted in it.

Al-Shāfi‘ī said: Everything—heavens, earth, ensouled beings, 73
trees, and whatever else—God created. For every animal, God
is responsible for its provisioning, and He knows «its lair and its
habitation.»⁸³

God also said: «It is not for the people of Medina and the Bed- 74
ouin Arabs around them to hold back behind God’s Emissary and
to prefer their lives to his.»⁸⁴ This is, in its import, just like the pre-
ceding verse. What is intended by it is simply those men who are
capable of engaging in jihad. None of them may prefer his own life
to the life of the Prophet, whether or not they are capable of jihad.
So this verse has in it both a restricted and an unrestricted import.

He also said: «And the oppressed, men, women, and children 75
who say, “Our Lord, take us out of this town whose people are
wrongdoers.”»⁸⁵ So it is, too, in God’s word: «When they came to
the people of a town, they asked its people for food. They refused to
give them hospitality.»⁸⁶ In this verse is an indication that they did
not ask all the people of the town for food, so its import is the same
as the two preceding verses. In it and in the “town whose people are
wrongdoers” is a restricted expression, since all the people of the

town were not wrongdoers. There may have been Muslims among them, and yet they were outnumbered and a minority.

- 76 In the Qur'an there are many passages similar to that; these should suffice, God willing. In accounts of the Prophet's Practice, too, are similar passages that are discussed in the appropriate place.



CHAPTER EXPLAINING WHAT IS REVEALED IN THE BOOK, THE APPARENT MEANING OF WHICH IS UNRESTRICTED BUT WHICH COMBINES THE UNRESTRICTED AND THE RESTRICTED

- 77 God (blessed and exalted) said: «We have created you male and female and made you races and tribes that you may know one another. The noblest of you in the sight of God is the most God-fearing of you.»⁸⁷ He also (blessed and exalted) said: «Fasting is prescribed for you, as it was prescribed for those who were before you, so that you may be God-fearing, for a fixed number of days. Those of you who are sick or on a journey, a number of other days.»⁸⁸ And He said: «Prayer is a prescription at fixed times for the believers.»⁸⁹

- 78 It is clear in the Book of God that these two verses contain unrestricted and restricted expressions. What is unrestricted in them is God's word: "We have created you male and female and made you races and tribes that you may know one another." Every created person is addressed by that, during the era of the Prophet, beforehand, and afterward, and whether created male or female. All of them are races and tribes. What is restricted in it is God's word: "The noblest of you in the sight of God is the most God-fearing of you." This is because fear of God is only incumbent on those persons who have reached their majority, who can understand it, and

who are qualified to realize it. It does not apply to creatures that are beasts and so on, nor to people of unsound mind, nor to children who have yet to attain their majority such that they could comprehend what it is to fear God. The only ones who can be described in terms of such fear or its opposite are those who are able to comprehend it and are thus among its practitioners, or those who act contrary to it and are thus not among its practitioners.

The Book indicates what I have just explained, and in Prophetic Practice is an indication of it as well. God's Emissary said: "The pen is lifted from three: the sleeper until he awakes; the youth until he reaches maturity; and the insane until he recovers." So, too, Revelation concerning fasting and prayer: they are incumbent on mature persons of sound mind; not those who have yet to reach maturity, or those who have reached maturity but whose rational faculty is impaired, or menstruating women during their menses. 79



CHAPTER EXPLAINING WHAT IS REVEALED IN THE BOOK, THE APPARENT MEANING OF WHICH IS UNRESTRICTED BUT WHICH IS INTENDED IN ITS ENTIRETY AS RESTRICTED

God said: «Those to whom the people said, "The people have gathered against you. Fear them." This increased them in their faith and they said, "God is sufficient for us. How excellent a guardian He is."»⁹⁰ 80

Al-Shāfi'ī said: Since those who were with God's Emissary were "people" other than those "people" who gathered against them, and those who informed them were "people" other than those who gathered against them, and other than those who were with him against whom—along with him—the others had gathered, and 81

those who gathered were also “people,” the indication is an obvious case of what I have described, namely that it was only some of the people who gathered against them and not others. It is known with certainty that all people did not gather against them, and that all people did not inform them, and that they themselves were not all people. But, because the term “people” applies at a minimum to three individuals and at a maximum to all people, and to those between three and everyone, it is valid in the language of the Arabs to say “those to whom the people said,” even though those who said that to them be only four individuals. By the phrase “the people have gathered against you,” those speaking were referring to those who fled Uḥud. They were merely a not-very-large group of people, those who were gathering, not those who were gathered against, and those who informed the ones against whom others had gathered were other than the other two groups. Indeed, the majority of the people in their locales were other than those who gathered, and other than those against whom they gathered, and other than those who informed them about it.

82 God also said: «O men, a parable has been coined. Listen to it. Those on whom you call, to the exclusion of God, will never create a fly, though they combine to do it. And if a fly robs them of anything, they will not rescue that from it. Weak are both the seeker and the sought.»⁹¹

83 The expression is unrestricted in its application to all people. It is clear, however, to experts in the Arabic language that by this expression of unrestricted import only some people are meant and not others. This is because He addresses thereby only those who call on a deity other than God (He is far exalted above what they say). After all, among them are believers whose rational faculties are impaired, and others whose rational faculties are not, but who do not call on a deity other than God. This, in its import, is similar to the preceding verse in the view of scholars of Arabic, though the preceding verse is clearer for nonscholars because of the many indications in it.

Al-Shāfi‘ī said: God (blessed and exalted) said: «Then press on 84
from where the people press on.»⁹² It is known with certainty, God
willing, that not all “the people” were present at ‘Arafah at the time
of God’s Emissary. God’s Emissary is the one addressed by this, and
those who were with him. It is, however, valid in the Arabs’ speech
that one say “press on from where the people press on,” and mean
only some of the people.

This verse is of similar import to the two preceding ones, though 85
they are all, for the Arabs, the same. The first verse is, for those igno-
rant of the Arabs’ language, clearer than the second, and the second
is clearer for them than the third, even though their respective clar-
ity altogether does not differ for the Arabs, for whom a minimally
clear statement suffices in lieu of a more expansive one. The one
listening wants merely to understand what the person speaking is
saying, so the tersest utterance by which the speaker can make him-
self understood is sufficient for the listener.

God (sublime His praise) also said: «whose fuel is men and 86
stones.»⁹³ God’s Book indicated that its “fuel” was only some of the
people and not others by reason of His saying «Those for whom the
fairest reward has gone forth from Us—those will be removed far
from it.»⁹⁴



CHAPTER ON THE CATEGORY OF STATEMENTS IN WHICH CONTEXT INDICATES THE MEANING

God (blessed and exalted) said: «Ask them about the town that was 87
by the sea, when they transgressed against the Sabbath, when their
fish came to them on the day of their Sabbath, moving from the
deep water, and did not come to them on the day when they did not
keep the Sabbath. In this way We were trying them because they

were profligates.»⁹⁵ He began (sublime His praise) by mentioning the command to ask them about the town by the sea. When He said “when they transgressed against the Sabbath,” He indicated that He intended only the “people” of the town, because the town itself was not capable of transgression, nor of profligacy by reason of transgressing against the Sabbath, nor of any other transgression. By referring to transgression He meant only the “people” of the town whom He tried because of their profligacy.

- 88 He also said: «How many a town that did wrong have We shattered, and raised up after it another people! And when they perceived Our might, you could see them running from it!»⁹⁶ This verse is, in its import, like the preceding verse. He mentioned the shattering of the town, and when He mentioned that it “did wrong” it became clear to the one listening that the wrongdoers were only its “people,” and not their dwellings, which cannot themselves do wrong. Similarly, when He mentioned the “people” who were raised up afterward and their perception of might upon the shattering of the town, it became known with certainty that the only ones who perceived might were those human beings who were capable of knowing what might is.



THE CATEGORY IN WHICH THE WORDING INDICATES THE TRUE MEANING RATHER THAN THE APPARENT MEANING

- 89 God (blessed and exalted) said, while relating what Joseph’s brothers said to their father: «We testify only to that which we know. We could not guard against the Invisible. Ask the town in which we were and the caravan in which we came. We are really speaking the truth.»⁹⁷ This verse is, in its import, like the preceding verses and so

does not differ at all for scholars of Arabic. They tell their father to ask the “people” of the town and the “people” of the caravan, since the town and the caravan themselves cannot inform him about the brothers’ truthfulness.



CHAPTER ON WHAT IS REVEALED AS UNRESTRICTED AND WHICH PROPHETIC PRACTICE IN PARTICULAR INDICATED IS INTENDED AS RESTRICTED

God (sublime His praise) said: «To each of his parents one-sixth of 90
what he leaves, if he has a child; but if he does not have a child and
his heir is his father, his mother gets a third; but if he has brothers,
his mother gets a sixth.»⁹⁸ He also said: «To you is half of what your
wives leave, if they have no child; but if they have a child, you get
a quarter of what they leave, after any bequest they may have made
or any debt. They get a quarter of what you leave, if you have no
child; but if you do have a child they receive one-eighth of what
you leave after any bequest you may have made or any debt. If a
man, or a woman, has no direct heir, but has a brother or sister,
each of the two gets a sixth. If there are more than that, they share
in a third after any bequest he may have made or any debt that is
not prejudicial. This is a charge from God. God is Knowing and
Prudent.»⁹⁹

He stated that parents and spouses take what is named in those 91
situations. This is an unrestricted expression. The Practice of God’s
Emissary indicates, however, that He only meant certain parents,
children, and spouses, and not others. That is, He meant that the
religion of the parents and their children, and of the spouses, be
the same as that of the deceased, and that the heir who is a parent

or spouse not be the killer of the deceased and not a slave. He said: «after any bequest he may have made or any debt.»¹⁰⁰ The Prophet stated that bequests were restricted to one-third of the estate and no more, and that the heirs¹⁰¹ take the remaining two-thirds. He further stated that debts should be satisfied before bequests and inheritance shares, and that there should be no bequest and no inheritance until the creditors' debts are satisfied. If not for the indication from the Prophet's Practice, and then people's consensus,¹⁰² inheritance shares would not be distributed after testamentary bequests or satisfaction of debts, and the testamentary bequest would either be given priority over debts or have equal priority with them.

92 God also said: «When you rise to pray, wash your faces and your hands up to the elbows, and wipe your heads and wash your feet up to the ankles.»¹⁰³ He (sublime His praise) directed one to wash the feet, just as he directed one to wash the face and hands. The apparent sense of this verse is that the only washing that would be legally sufficient for the feet is what would be so for the face, or, if one wipes the feet, then the only wiping that would be legally sufficient is what would be so for the head.¹⁰⁴ It is possible, however, in regard to washing or wiping the feet, that only some of the persons performing ablutions are intended and not others. When God's Emissary wiped his footwear, and commanded that anyone should do so who had put his feet into footwear while in a state of complete ritual purity, the Practice of God's Emissary indicated that, in regard to washing or merely wiping the feet, some of the persons performing ablutions were intended and not others.

93 God (blessed and exalted) also said: «The thief, male and female: cut off their hands as a recompense for what they have acquired—an exemplary punishment from God.»¹⁰⁵ God's Emissary established the practice that “there is no amputation for fruit or palm hearts,” and that indicated that no amputation was to be carried out except for persons who stole from a place of safekeeping. He also clarified that amputation was only to be carried out for those whose theft amounted to a quarter dinar and up.

God also said: «The fornicator and the fornicatress, scourge each one of them a hundred lashes.»¹⁰⁶ In regard to female slaves, He said: «If they commit indecency once they are properly safeguarded, they shall incur half of the punishment for other safeguarded women.»¹⁰⁷ The Qur'an indicates that the one hundred lashings were meant to apply only to free persons, and not to female slaves. Then, when God's Emissary had nonvirgins who engaged in unlawful sexual intercourse stoned, not flogged, the Practice of God's Emissary indicated that the hundred lashes for those who committed unlawful sexual intercourse were intended to apply to free virgins, and that the punishment of amputation for theft was intended to apply to those thieves who stole from a place of safe-keeping and whose theft had a minimum value of a quarter dinar, and not to others to whom the terms "theft" and "unlawful sexual intercourse" would otherwise apply.

God also said: «And know that a fifth of whatever you take as spoils belongs to God and to the Emissary and the near kinsmen and the orphans and the destitute and the traveler.»¹⁰⁸ So when God's Emissary gave to the Hāshim and al-Muṭṭalib clans the share of "the near kinsmen," the Practice of God's Emissary indicated that "the near kinsmen" to whom God granted a share of one-fifth were the Hāshim and al-Muṭṭalib clans, to the exclusion of others. After all, the entire tribe of Quraysh are the Prophet's near kinsmen, and the 'Abd Shams clan is equal in that regard to the al-Muṭṭalib clan; together they are the children of a single father and mother, even though some of the al-Muṭṭalib clan are distinguished from them by descent from the Hāshim clan. So when no share went to those who were descended from the al-Muṭṭalib clan alone, without also having ties of descent to the Hāshim clan, that indicated that only the Hāshim clan in particular were given a share—not others—because of their ties of ancestral origin and their presence all together at the Prophet's victory in the ravine, before it and after it.¹⁰⁹ It also indicated that God (sublime His praise) intended them in particular. The Hāshim clan was born within the tribe of Quraysh,

yet no others among Quraysh were given any share of the fifth by reason of their descent. The Nawfal clan is their equal in ancestral origins even though they are descended from a different mother than Hāshim's.

96 God also said: «And know that a fifth of whatever you take as spoils belongs to God and to the Emissary.»¹¹⁰ So when God's Emissary gave the spoils to the person who killed a foe during the onslaught, the Prophet's Practice indicated that the booty that is divided into fifths in the Book of God is other than the spoils, since the spoils are taken as booty during the onslaught, separately from the spoils taken at other times. Moreover, it shows that the plundered items that are taken at times other than during the onslaught are booty that is to be divided into fifths, along with other kinds of booty according to Prophetic Practice.

97 Had it not been for the inference based on Prophetic Practice and our ruling according to the apparent meaning, we would have imposed amputation on everyone to whom the term "theft" applied; given anyone who committed unlawful sexual intercourse, whether slave or free, one hundred lashes; given the share of the near kinsmen to anyone with a kinship tie to the Prophet—and then it would have reached groups among Bedouin Arabs, since he had close familial ties among them; and included the spoils in the booty that is divided into fifths, since it is part of what is taken as booty, just like the rest of the booty.



EXPLANATION OF GOD'S IMPOSITION IN HIS BOOK OF THE OBLIGATION TO FOLLOW THE PRACTICE OF HIS PROPHET

Al-Shāfi'ī said: God put His Emissary in a position relative to His religion, His obligations, and His Book in a way that clarified that He had made him a signpost of His religion. He did this by imposing the obligation to obey him and making disobedience to him unlawful. God also provided a clear statement about his excellence by pairing together faith in His Emissary with faith in Him. He said (blessed and exalted): «So believe in God and His emissaries and do not say, “the Trinity.” Desist. That is better for you. God is one god. His glory is too great that He should have a son.»¹¹¹ He also said: «The believers are only those who believe in God and His Emissary and who, when they are with him on some common matter, do not leave till they have sought his permission.»¹¹² He thus made the perfect beginning of faith—to which all else is subordinate—faith in God, and then in His Emissary. If one of His servants believes in Him but not in His Emissary, then the term “perfect faith” cannot ever apply to him until he comes to believe in His Emissary along with Him. Such was the status of the Practice of God's Emissary for everyone whom he interrogated about their faith. 98

Mālik reported to us from Hilāl ibn Usāmah, from 'Aṭā' ibn Yasār, from 'Umar ibn al-Ḥakam, who said: “I came to God's Emissary with a young female slave and said, ‘O Emissary, it is incumbent on me to free a slave; should I manumit her?’ ‘Where,’ God's Emissary asked her, ‘is God?’ ‘In the sky,’ she replied. ‘Who,’ he asked, ‘am I?’ ‘You are God's Emissary,’ she answered. So he freed her.” Al-Shāfi'ī said: The transmitter's name is actually Mu'āwiyah ibn al-Ḥakam. 99

People other than Mālik narrated it thus, and I think that Mālik did not memorize his name properly.

100 Al-Shāfi‘ī said: God obliged people to follow His revelations and the practices of His Emissary. He said in His Book: «“Our Lord, raise up among them an emissary, who is one of themselves, who will recite Your signs to them and will teach them the Book and wisdom and will purify them. You are the Mighty and the Wise.”»¹¹³ He also said (sublime His praise): «Even as We have sent among you an emissary who is one of you, who recites Our signs to you and will purify you and teach you the Book and wisdom, and will teach you what you did not know»¹¹⁴ and «God has been gracious to the believers when He raised up among them an emissary from among themselves, who recites to them His signs and brings them purity and teaches them the Scripture and wisdom, although before that they were in manifest error»¹¹⁵ and «It is He who has sent among the common people an emissary from among themselves, to recite His signs to them and to purify them and to teach them the Book and wisdom—previously they were in manifest error»¹¹⁶ and «But remember God’s blessing to you and the Book and the wisdom that He has sent down to you»¹¹⁷ and «God has sent down to you the Book and wisdom, and He has taught you what you did not know. God’s bounty to you is great»¹¹⁸ and «Remember those of the signs of God and wisdom that are recited to you in your apartments. God is Gentle and Informed.»¹¹⁹

101 So God mentioned the Book, which is the Qur’an, and He mentioned wisdom. I have heard someone of whom I approve among scholars of the Qur’an say that “wisdom” is the Practice of God’s Emissary. That seems to be a correct interpretation of what God said, though God knows best, because the Qur’an was mentioned and then wisdom followed it. God mentioned His bestowal of grace on His creatures by teaching them “the Book and wisdom.” So it is not permissible, though God knows best, to say that “wisdom” here is anything but the Practice of God’s Emissary. That is because it is paired with the Book of God, and God imposed the obligation to

obey His Emissary, and decreed that people follow his command. So it is not permissible to say that a particular statement constitutes an obligation unless it belongs to God's Book and then to an account of the Practice of His Emissary. This is because of what we just explained: God paired faith in His Emissary with faith in Him. The Practice of God's Emissary clarifies, on God's behalf, the meaning of what God intended, serving to indicate when His expressions are restricted and when unrestricted. Moreover, He paired the wisdom imparted by Prophetic Practice with His Book, and made it to follow the Book, something He did only for His Emissary and not for any other of His creatures.



THE OBLIGATION FROM GOD TO OBEY THE PROPHET, PAIRED WITH OBEDIENCE TO GOD AND MENTIONED SEPARATELY

God said: «When God and His Emissary have decided a matter, it is not for any believing man or woman to have any choice in the affair. Whoever disobeys God and His Emissary has gone astray in manifest error»¹²⁰ and «O you who believe, obey God and obey the Emissary and those of you who have authority. If you quarrel with one another about anything, refer it to God and the Emissary, if you believe in God and the Last Day. That is better and fairer as a course.»¹²¹ 102

A certain scholar said, “‘Those who have authority’ are the commanders of God's Emissary's military expeditions, though God knows best.” Thus were we informed by more than one scholar of Qur'anic exegesis. This appears to be a correct interpretation of what God said, though God knows best. The Bedouin Arabs who 103

were around Mecca knew no political authority and refused to grant each other such authority. When they submitted in obedience to God's Emissary, they did not think that it was proper to do so for anyone but God's Emissary. So they were commanded to obey the military commanders whom God's Emissary had appointed, showing not unlimited obedience but an exceptional obedience that accorded to the Bedouin certain rights and obligations. So He said: "If you quarrel with one another about anything, refer it to God and the Emissary," meaning: if you disagree about anything.

104 This, God willing, is as he said in regard to those who have authority except that God said "If you quarrel with one another," meaning, though God knows best, them and their commanders whom they were ordered to obey. "Refer it to God and the Emissary" means, though God knows best, refer it to what God and the Emissary say, if you know it. If you do not know it, then you should ask the Emissary about it if you or one of you reaches him. This is because of the obligation which you may not dispute, based on God's word: "When God and His Emissary have decided a matter, it is not for any believing man or woman to have any choice in the affair." Whoever among those after God's Emissary has a dispute should refer the matter to God's decree, then to that of His Emissary. If there is no decree in the form of an explicit text that is relevant to their dispute in one or both of these sources, they should refer it to an analogy based on one of them, as I have discussed in regard to determining the prayer-direction, determining who is just such that they can be made a witness, and determining the like of the game animal, together with what God has said in more than one verse concerning matters similar to this. He said: «Those who obey God and the Emissary—they are with those whom God has blessed: the prophets and the loyal ones and the witnesses and the righteous. They are fine companions»¹²² and «O you who believe, obey God and His Emissary.»¹²³



CHAPTER ON GOD'S COMMAND TO OBEY GOD'S EMISSARY

God said (sublime His praise): «Those who swear allegiance to you are swearing allegiance to God. The hand of God is above their hands. Whoever breaks his oath breaks it against himself; but whoever fulfills the covenant he has made with God, He will give him a mighty wage»¹²⁴ and «Those who obey the Emissary obey God.»¹²⁵ He apprised them that their allegiance to His Emissary was allegiance to Him and thus He apprised them that obedience to His Emissary was obedience to Him, and He likewise said: «No, by your Lord, they will not believe until they make you the judge concerning what is in dispute between them, and then they will not find in their souls any difficulty in what you decide but will submit readily.»¹²⁶ 105

This verse was revealed, as far as we have been told, though God knows best, concerning a man who litigated against al-Zubayr over some land. The Prophet adjudicated in favor of al-Zubayr. This judgment constitutes a practice of God's Emissary, not a ruling in the form of an explicit text in the Qur'an. The Qur'an indicates, though God knows best, what I have already noted above: had it been a judgment in the Qur'an, it would have been a ruling in the form of an explicit text in the Book of God. Had they failed to submit to a ruling in the Book of God that was in the form of an explicit text that posed no difficulty, it would be as if they had ceased to be believers, since they would have rejected a ruling from Revelation if they had not submitted to it. 106

He also said (blessed and exalted): «Do not make the summoning of the Emissary among you like your summoning of one another. God knows those of you who slip away and conceal themselves. So 107

let those who dissent from His command beware lest a trial or a painful punishment befall them»¹²⁷ and «When they are called to God and His Emissary that he may judge between them, lo, a party of them turn away. If they are in the right, they come to him submissively. Is there a disease in their hearts, or do they have doubts, or do they fear that God and His Emissary may be unjust to them? No! They are the wrongdoers. When the believers are called to God and His Emissary that he may judge between them, the only thing they say is, “We hear and obey.” Those are the ones who prosper. Those who obey God and His Emissary and fear God and protect themselves against Him—those are the triumphant.»¹²⁸

108 In this verse God informed the people that when they summon God’s Emissary to rule between them it is tantamount to summoning God’s ruling, because the one making the ruling between them is God’s Emissary. If they submit to the ruling of God’s Emissary, then they submit to God’s ruling by reason of the obligation that He imposed. He further informed them that His Emissary’s ruling is His ruling, in the sense that He imposed his ruling on them as an obligation, and in addition He blessed His Emissary with infallibility and assistance, as well as the receipt of guidance, and the heeding of His command, to which God attested in His foreknowledge (sublime His praise). So God confirmed the obligation that He imposed, binding His creatures to obey His Emissary and informing them that such obedience is obedience to Him. He thus let it be known that they have an obligation to follow both His command and the command of His Emissary and that obedience to His Emissary is obedience to Him. He further informed them that He obliged His Emissary to follow His own command (sublime His praise).



CHAPTER ON GOD'S STATEMENT TO HIS
CREATION CONCERNING HAVING OBLIGED HIS
EMISSARY TO FOLLOW WHAT WAS REVEALED
TO HIM; THE EVIDENCE HE GAVE CONCERNING
HIS EMISSARY'S FOLLOWING WHAT HE
WAS COMMANDED TO DO, HIS EMISSARY'S
BEING GUIDED, AND HIS EMISSARY'S
GUIDANCE OF THOSE WHO FOLLOW HIM

Al-Shāfi'ī said: God (sublime His praise) said: «O Prophet, fear 109
God and do not obey the unbelievers and the hypocrites. God is
Knowing and Wise. And follow what is revealed to you from your
Lord. God is informed of what you do.»¹²⁹ He also said: «Follow
what has been revealed to you from your Lord—there is no god but
Him—and turn away from those who associate others with God»¹³⁰
and «Then We set you on a clear way that comes from Our affair. So
follow it, and do not follow the whims of those who do not know.»¹³¹

God informed His Emissary that He had blessed him, alone 110
among all His creatures, with infallibility, according to His fore-
knowledge, when He said: «O Emissary, proclaim what has been
sent down to you from your Lord. If you do not do that, you are not
delivering His message. God will protect you from the people.»¹³²

He (sublime His praise) bore witness that the Prophet held fast 111
to what he was commanded to do, to the guidance he received con-
cerning himself, and to the provision of guidance for those who fol-
lowed him: «And thus We have inspired you with a Spirit of Our
command. You did not know what the Book was nor the Faith, but
We made it a light, by which We guide such of Our servants as We
wish. You guide to a straight path.»¹³³

- 112 He also said: «But for God’s bounty and mercy to you, a party of them had intended to lead you astray. But they will only lead themselves astray, and they will not harm you in any way. God has sent down to you the Book and wisdom, and He has taught you what you did not know. God’s bounty to you is great.»¹³⁴
- 113 God stated that He had obligated his Prophet to follow His command, and He testified that he was to communicate things on God’s behalf. He also testified to Himself through the Prophet, and we testify to Him through the Prophet, seeking nearness to God through faith in and supplication to Him by deeming the Prophet’s words true.
- 114 ‘Abd al-‘Azīz reported to us from ‘Amr ibn Abī ‘Amr, client of al-Muṭṭalib, from al-Muṭṭalib ibn Ḥanṭab, that God’s Emissary said: “Of what God commanded I have omitted nothing without also commanding it myself, and of what God prohibited I have omitted nothing without also prohibiting it myself.”
- 115 Al-Shāfi‘ī said: What God told us—from what was in His foreknowledge and predetermined by His decree, which none can resist, in regard to God’s favor and grace toward him—is that He guarded him against his being led astray by others, and He informed him that no one would be able to harm him at all. In thus testifying to him—that he guides to a straight path, God’s path—and in testifying to his fulfillment of his mission and obedience to God’s command, and in what I have described about God’s imposition of the obligation to obey him, and His affirmation of it in the verses that I have mentioned, God has furnished binding authority that compels His creatures to submit to the rulings of God’s Emissary and to follow his command.
- 116 Al-Shāfi‘ī said: The practices instituted by God’s Emissary concerning things for which God has no ruling were themselves provided pursuant to God’s ruling. Thus did God inform us in His saying: «You guide to a straight path, the path of God.»¹³⁵ God’s Emissary has instituted practices that function together with the Book of God and also others concerning situations for which no

precisely apposite, explicit scriptural proof-text exists. God bound us to follow all the practices that His Emissary provided. He made following him equivalent to obedience to God and obstinate resistance to following him equivalent to disobedience that cannot be excused for any of His creatures. He made it so that there is no way to avoid following the practices of God's Emissary, because of what I have explained and what God's Emissary has said.

Sufyān reported to us from Sālim Abū l-Naḍr, client of 'Umar ibn 'Ubaydallāh, who heard 'Ubaydallāh ibn Abī Rāfi' transmit from his father that God's Emissary said: "I had better not find any of you resting on his bench when a command that I have issued comes, whether commanding or prohibiting something, and saying, 'I don't know—we only follow what we find in the Book of God.'"

Sufyān said: "Muḥammad ibn al-Munkadir transmitted it to me from the Prophet but with an incomplete record of transmission." Al-Shāfi'ī said: The "bench" is a raised couch.

The practices of God's Emissary function together with the Book of God in two ways. One of these is when there is an explicit scriptural proof-text and God's Emissary follows it just as God has revealed it. The other is a general statement in regard to which God's Emissary explains, on God's behalf, the meaning of what God intended in the general statement, and clarifies how He made it obligatory, whether its application is unrestricted or restricted, and how God's servants are to approach it. In both cases, he is adhering to the Book of God.

I know of no one among the scholars who disagrees about the fact that the Prophet's practices are of three kinds. They agree about two of those kinds. The two kinds in question are convergent in some respects and divergent in others. One of them is when God reveals an explicit scriptural passage, and then God's Emissary explains the like of that for which the Book provided the explicit passage. The other is when God reveals a general scriptural passage, and then he explains, on God's behalf, what He intended. These are the two varieties about which they do not disagree. The third kind

is when God's Emissary institutes a practice concerning something for which there is no explicit scriptural proof-text.

121 A certain scholar said: "By imposing the obligation to obey the Prophet, and in accord with His foreknowledge that He would assist the Prophet to please Him, God gave the Prophet the ability to establish practices that concern matters not dealt with in an explicit scriptural passage." Another scholar said: "He never established a practice that did not have some foundation in the Book, just as his practice that clarifies the number of prayers and how they were to be performed was provided pursuant to a generally worded passage that established the obligation to pray. So, too, are the practices that he established concerning sales and other legal matters, because God said «Do not consume your property among you in vanity»¹³⁶ and «God has made sales lawful, while He has forbidden usury.»¹³⁷ So he clarified what God made lawful and unlawful, on God's behalf, just as he clarified the prayer." Still another scholar said: "This was brought to him as part of God's message, and it confirmed his Practice by means of what God imposed as an obligation." Yet another said: "God cast every practice that the Prophet established into the Prophet's heart, and his Practice as a whole is the wisdom that was cast into his heart by God; so whatever was cast into his heart became his Practice."

122 'Abd al-'Azīz reported to us from 'Amr ibn Abī 'Amr, from al-Muṭṭalib, who said: God's Emissary said: "Of what God commanded I have omitted nothing without also commanding it myself, and of what God prohibited I have omitted nothing without also prohibiting it myself. Indeed, the Faithful Spirit cast into my heart the idea that no soul will die until it has exhausted its provisions, so persevere in the search!"

123 Among what He cast into his heart is his Practice, which is the wisdom that God has mentioned; and also the scriptural passages that He revealed to him, which make up God's Book. Both came to him from God's grace, just as God intended, and just as other acts

of grace came to him. What they have in common is that they are acts of grace, but they differ in regard to the matters to which they pertain. I ask for God's protection and assistance.

However that may be, God has made clear that He imposed in His Book the obligation to obey His Emissary, did not allow anyone in His creation an excuse to go against a commandment which that person knows to be a commandment of the Emissary's, and caused all people to have need of him in their religion. He established His proof for them by using the practices of God's Emissary to indicate the reasons behind what God intended by the obligations imposed in His Book. God did this so that whoever comes to understand what we have noted about such obligations—to wit: if accounts of his Practice explain, on God's behalf, the meaning of what God intended by imposing an obligation in an explicit scriptural proof-text which they recite, and another practice exists for matters not found in such a proof-text—will understand that those obligations are always thus, wherever they may occur. God's ruling does not differ from that of His Emissary. Rather, the latter, too, is binding in all cases. God's Emissary said something similar to this in the hadith-report from Abū Rāfi', which we wrote out above.¹³⁸ 124

In regard to what we have explained above concerning Prophetic Practice and the Book of God together, and Prophetic Practice as it pertains to situations for which there is no explicit scriptural passage, I will now mention some matters that indicate in a general way what we have already discussed, God willing. We will begin, first, in regard to the Practice of God's Emissary together with the Book of God, with a discussion of how to use his Practice to draw inferences about abrogation in the Book of God. Next, we will discuss textually explicit obligations in the Book of God for which God's Emissary has provided parallel practices. Then we will mention general obligations in respect of which God's Emissary has stated, on God's behalf, their modalities and appointed times. Then we will discuss God's unrestricted commandments that He intends to 125

be unrestricted, and those that appear unrestricted but which He intends to be restricted. Then we will discuss Prophetic Practice as it pertains to matters for which there is no explicit scriptural passage.¹³⁹



THE BEGINNING OF ABROGATION

126 Al-Shāfi‘ī said: God created creation according to His foreknowledge of what He intended by creating it and of what He intended for it. «None repels His judgment, He is swift to reckoning.»¹⁴⁰ He revealed the Book to them «as an explanation of everything»¹⁴¹ and as guidance and mercy. He imposed obligations in it that He confirmed and others that He abrogated. This was a mercy to His creatures, lightening their burden and granting them respite, in addition to the graces that He had already shown them. For complying with what He had affirmed for them, He rewarded them with Paradise and salvation from His punishment. Thus did His mercy encompass them in regard to what He had confirmed and abrogated. Praise is due to Him for these graces.

127 God stated to them that He only abrogates things in the Book by means of the Book, and that Prophetic Practice does not abrogate the Book. It is instead subordinate to the Book, containing the like of what is revealed in the form of a clear text, and explaining the meaning of what God revealed in general terms. God said: «And when Our signs are revealed to them as clear proofs, those who do not expect to meet Us say, “Bring a different Qur’an from this, or change it.” Say, “It is not for me to change it of my own accord. I only follow what is revealed to me. I fear the punishment of a mighty day if I disobey my Lord.”»¹⁴²

God reported that He obligated His Prophet to follow what was revealed to him. He did not give him the power to change it on his own initiative. In His saying “It is not for me to change it of my own accord” is a clear statement of what I have described: the Book of God is not abrogated except by His Book. Just as He is the initiator of His obligations, He expunges and confirms what He wills of them (sublime His praise). That is not for any of His creatures to do. Thus He said: «God effaces and establishes what He wishes. With Him is the matrix of the Book.»¹⁴³ 128

A certain scholar said of this verse, though God knows best, that it indicates that God did allow His Emissary to say things on his own initiative, with God’s assistance, in regard to matters for which no scriptural passage had been revealed. But God knows best. 129

It has been said, concerning His saying “God effaces . . . what He wishes”: He erases His obligation as He wishes and confirms His obligation as He wishes. This idea resembles what has already been said, though God knows best. But in the Book of God is an indication of it. God said: «Whatever verses We abrogate or delay,¹⁴⁴ We bring better or the like. Do you not know that God has power over everything?»¹⁴⁵ God reported that abrogation of the Qur’an and the delay of its revelation will only occur by means of a Qur’anic passage that is its like. He also said: «When We exchange one verse for another—and God is aware of what He sends down—they say, “You are simply inventing it.”»¹⁴⁶ 130

So, too, for the Practice of God’s Emissary. Only a practice from God’s Emissary may abrogate another such practice. If God provides a new ruling to His Emissary concerning a matter for which His Emissary has already established a practice, one other than the practice established previously by God’s Emissary, then God’s Emissary would institute a new practice concerning the new ruling provided by God. This would clarify for people that the new practice of God’s Emissary abrogates the prior one to the extent it was inconsistent with the new one. This phenomenon is in fact discussed in accounts of his Practice (may God bless him and grant him peace). 131

132 Someone might say, “We are aware of the indication that only the Qur’an abrogates the Qur’an because there is nothing like the Qur’an. Cite something for us that relates to Prophetic Practice.” Al-Shāfi‘ī said: The above discussion of God’s imposition of the obligation to follow the commands of His Emissary shows that the Practice of God’s Emissary is received from God alone, so whoever follows it does so by reason of the Book of God. As far as we are aware, God has not provided any revealed reports that are in the form of clear texts binding on His creatures except for those from His Book and the Practice of His Prophet. So if that Practice is as I have described and if it is impossible to confuse it with the speech of any other of God’s other creatures, then nothing but its like may abrogate it. It has no like save Prophetic Practice because what God granted to His Prophet He did not grant to anyone after him. Indeed, He obligated His creatures to follow the Prophet and made the Prophet’s command binding on them. The follower should not contravene what he is obligated to follow. Whoever must follow the Practice of God’s Emissary may not contradict it and is in no position to abrogate any of it whatsoever.

133 If someone were to ask, “Is it possible that there be a practice that is transmitted but which has been abrogated and that the practice that abrogates it not be transmitted?” That is not possible—how could it be possible for a canceled obligation to be transmitted and a binding obligation to be abandoned? If that were permissible, then the entirety of such practices could escape people’s grasp since they would say, “Perhaps it has been abrogated.” No obligation is ever abrogated without another obligation being confirmed in its place, just as when the prayer-direction of Jerusalem was abrogated, the Kaaba was confirmed in its place. Every part of a scriptural passage or practice that is abrogated is thus.

134 If someone were to ask, “Can Prophetic Practice be abrogated by the Qur’an?” one should reply: if a Prophetic Practice were abrogated by the Qur’an, then the Prophet would have an individual practice clarifying that his original practice was abrogated by a

subsequent one, and this would furnish binding authority showing that something is only abrogated by its like.

If someone says, “What indicates that what you say is correct?” 135
It is what I have described about that position from which he states, on God’s behalf, the meaning of what He intended by His obligations, whether restricted or unrestricted—and the other things I have discussed in this, my book. Also, he only addresses himself to something based on God’s ruling, and if God abrogates anything for which he, too, has a ruling then God’s Emissary would furnish a new practice for what has been abrogated.

If it were permissible to say, “God’s Emissary established a practice and then that practice was abrogated by the Qur’an but no abrogating practice was transmitted from God’s Emissary,” then it would also be permissible to say, in regard to all the sales transactions that God’s Emissary has forbidden, “It is possible that he forbade them before it was revealed that «God has made sales lawful, while He has forbidden usury.»”¹⁴⁷ And in regard to those subject to stoning who commit unlawful sexual intercourse: “It is possible that the punishment of stoning is abrogated because of God’s word «The fornicator and the fornicatress, scourge each one of them a hundred lashes.»”¹⁴⁸ And in regard to wiping the footwear, that “the ablutions verse has abrogated the practice of wiping the footwear.”¹⁴⁹ And it would be permissible to say, “Punishment is not averted from the thief who steals from other than a place of safekeeping, or whose theft is less than a quarter dinar, because of God’s word «The thief, male and female: cut off their hands»”¹⁵⁰ and because the term ‘theft’ applies to whoever steals little or much, or steals from a place of safekeeping or otherwise.” And it would be permissible to reject every hadith-report from God’s Emissary by saying, “Perhaps he did not say it,” if the like of it were not found in Revelation. Thus it would become possible to reject such practices in two ways: every Prophetic practice paralleled by a generally worded scriptural passage could be abandoned because it might only possibly agree with it if it could be the case that the wording narrated from him

was contrary to the wording of Revelation in some respect—but of course they only ever agree with it; or the wording from him could be more expansive than what is found in Revelation in some respect and could be interpreted as contradicting it in some way.

- 137 The Book of God and His Emissary's Practice indicate otherwise, however, and agree with what we have said. The Book of God is the clear statement through which the blind are healed. It clearly indicates the position occupied by God's Emissary in relation to the Book of God and His religion, as well as his adherence to God's commands and his clarification of rulings on God's behalf.



ABROGATION INDICATED PARTLY BY THE BOOK AND PARTLY BY PROPHETIC PRACTICE

- 138 Al-Shāfi'ī said: One of the things transmitted by a scholar with whom I studied is that God revealed an obligation concerning prayer prior to the imposition of the five prayers. He said: «You who are wrapped up in a robe, stay up during the night, except for a little—half of it or a little less or a little more—and be distinct when reciting the Qur'an.»¹⁵¹ Then He abrogated this in the same sura: «Your Lord knows that you stay up close to two-thirds of the night or a half or a third, as do a party of those with you, for God measures the night and the day. He knows that you will not encompass all of it, and He has relented toward you. Recite only as much of the Qur'an as you are able. He knows that some of you will be ill and others will be traveling in the land seeking God's bounty and others will be fighting in God's cause. So recite of it what you are able; and perform prayer and pay alms.»¹⁵²

After his commanding the Prophet to stay up during the night, a little less than half or a little more, God said “close to two-thirds of the night or a half or a third, as do a party of those with you.” But then He lightened this obligation and said “He knows that some of you will be ill” and he recited up to “Recite only as much of the Qur’an as you are able.” 139

Al-Shāfi‘ī said: The abrogation of the requirement to stay up during the night, half of it, or somewhat less than half of it, or a little more, is clear in the Book of God by reason of His saying “Recite only as much of the Qur’an as you are able.” But His saying “Recite only as much of the Qur’an as you are able” could mean two different things. One is that such a recitation is a confirmed obligation by means of which another obligation was canceled. The other is that such a recitation is itself abrogated, canceled by means of another obligation, just as another was canceled by it. That subsequent abrogating obligation is God’s word «And some part of the night—keep vigil with it as a special gift for yourself. Perhaps your Lord will raise you to a laudable station.»¹⁵³ It is possible, however, that His saying “And some part of the night—keep vigil with it as a special gift for yourself” means that one keep a nighttime vigil in some way that is distinct from the obligation that God imposed to recite only as much of the Qur’an as one is able.¹⁵⁴ 140

Thus, it becomes necessary to draw an inference, based on Prophetic Practice, in favor of one of the two meanings. We found that the Practice of God’s Emissary indicates that there is no mandatory prayer apart from the five prayers. Accordingly, we hold that it is five prayers that are mandatory and that whatever other prayers were mandatory before them were abrogated by them, making an inference based on God’s word “Keep vigil with it as a special gift to yourself.” Moreover, they abrogate the requirement to stay up the night, half, or a third, and to recite only as much of the Qur’an as one is able. We would not want for anyone to omit to keep a night vigil, reciting as much of the Book of God in prayer as God has made 141

him able. The more one engages in such recitation, the more we prefer it.

142 Mālik reported to us from his paternal uncle Abū Suhayl ibn Mālik, from his father, that he heard Ṭalḥah ibn ‘Ubaydallāh say: “A Bedouin from Najd with a pock-marked face came up to us. We could hear the droning of his voice, but hardly understood what he was saying until he drew near. Then we realized that he was asking about Islam, so the Prophet said, ‘God has prescribed five prayers, to be performed during a full day and night.’ ‘Must I do anything else?’ he asked. ‘No,’ he replied, ‘except voluntarily.’ Then God’s Emissary mentioned to him the fast of the month of Ramadan. ‘Anything else?’ he asked. ‘No,’ he said, ‘except voluntarily.’ The man turned around to leave saying, ‘By God, I will not do more or less than that.’ ‘If he is telling the truth,’ said God’s Emissary, ‘then he will prosper.’”

143 ‘Ubādah ibn al-Šāmit narrated from the Prophet that he said: “God has prescribed five prayers, during a full day and night, for His creatures. Whoever performs them all without omitting any of them by making light of the obligation to perform them has a covenant with God that He will let him enter Paradise.”



CHAPTER ON THE OBLIGATION TO PRAY THAT THE BOOK AND THEN PROPHETIC PRACTICE INDICATE TO BE OBIATED BY REASON OF AN EXCUSE; AND CONCERNING HIM WHOSE PRAYER IS NOT COUNTED AS DISOBEDIENCE

144 God (blessed and exalted) said: «They ask you about menstruation. Say, “It is a vexation. Withdraw from women during menstruation and do not draw near to them until they are ritually pure. When

they are ritually pure, approach them as God has commanded you.” God loves those who repent, and He loves those who keep themselves clean.»¹⁵⁵

Al-Shāfi‘ī said: God obliged those who pray to attain ritual purity through ablutions and to perform the major cleansing from impurity. The prayer of someone who has not achieved ritual purity does not count. Since God mentioned menstruation, ordering that women set themselves apart until they become pure again, and permitting that they be approached when they perform purifying ablutions, we infer that they may achieve ritual purity by means of performing ablutions with water—since water is available under all circumstances in settled areas—but only after the cessation of menstruation. However, women who are actually menstruating may not achieve ritual purity using water because God mentioned purification only after they had already become purified. In this case, they become pure when they cease menstruating, according to the Book of God and the Practice of His Emissary. 145

Mālik reported to us from ‘Abd al-Raḥmān ibn al-Qāsim, from his father, from ‘Ā’ishah, who mentioned that she assumed the ritual state for pilgrimage while with the Prophet, and that she then began to menstruate. He commanded her to fulfill the obligations that the pilgrim usually fulfills, “except that you should not circumambulate the Sacred House until you become ritually pure again.” 146

We further inferred that by His imposition of the obligation to pray, God intended only those who, if they perform ablutions and the washing, become pure. The menstruating woman, however, does not become ritually pure by means of either. Menstruation is something that God created in her, not something she brings upon herself such that she would be disobedient by reason of it. So the obligation to pray during the days that she menstruates ceases, and it is not incumbent on her to render substitute performance¹⁵⁶ of the prayers that she omitted during the time that her obligation to pray ceased for that reason. 147

- 148 We hold in regard to one who faints or loses his mind for a temporary cause decreed by God and who has committed no infraction in regard thereto, by analogy from the menstruating woman, that he, too, is exempt from prayer because he does not understand it while his rational faculty ceases to function.
- 149 It is widely held among scholars that the Prophet did not command the menstruating woman to render substitute performance of the prayer. It is also widely held that she *is* enjoined to perform a substitute fast. We distinguish between the two obligations by making an inference based on what I have described above: the reports transmitted by scholars and their consensus. Fasting differs from prayer in regard to the traveler, who may postpone the fast until after the month of Ramadan, but he may not let a day pass without praying the prayer required during travel. The fast is only one month out of twelve, and the other eleven months of the year are devoid of the obligation to fast, but no person who is capable of performing the prayer is exempt from the obligation to pray.
- 150 God said: «Do not draw near to prayer when you are intoxicated, until you know what you say; nor when you are polluted, save when you are traveling, until you have washed yourselves.»¹⁵⁷ A certain scholar has said: “This verse was revealed before wine was outlawed.”
- 151 The Qur’an indicates, though God knows best, that the intoxicated person cannot perform the prayer until he knows what he is saying, since God begins by prohibiting him from praying and then mentions ritual impurity together with that. Scholars do not disagree that persons subject to major ritual impurity cannot pray until they achieve ritual purity. Even though the prohibition against the prayer of the intoxicated person was prior to the outlawing of wine, once wine was outlawed it became even more appropriate that such a person be prohibited from prayer, since that person would be disobedient in two respects: one is that he would be praying in a state in which he is prohibited from praying; and the other is that he would have drunk wine. Prayer involves words, deeds, and

abstentions. If he does not understand the words, deeds, and acts of abstinence that attend prayer, then he will not have performed the prayer as commanded, it will not count for him, and he will have to render substitute performance when he comes to his senses.

The intoxicated person differs from the one who loses his mind— 152
which occurs by God’s command and against which he has no power—because he has put himself in a state of intoxication. Thus, the intoxicated person must render substitute performance, while the one who has lost his mind on account of a temporary cause that he did not bring upon himself, such that he would be disobedient if he had, is not obligated to do so.¹⁵⁸

. . .

God made his Emissary face toward the prayer-direction of Jeru- 153
salem during prayer. That was the prayer-direction, and it was not lawful, before its abrogation, to face toward any other. Then God abrogated the prayer-direction of Jerusalem and made him face toward the Sacred House. It was no longer lawful for anyone ever to face toward Jerusalem for a prescribed prayer, and it is not lawful for anyone to face anything other than the Sacred House. Each was correct in its time. Facing toward Jerusalem during the days when God made His Prophet face toward it was correct. Then He abrogated it, and it became correct always to face toward the Sacred House; facing any other direction for a prescribed prayer is unlawful, except in cases of danger or for extra devotional prayers, while traveling. This is determined by inference from the Book and Prophetic Practice.

Thus is everything that God has abrogated. To “abrogate” means 154
to cancel an obligation: it was correct while in force, but it became correct to omit it once God abrogated it. Whoever lived during the time when it was obligatory obeyed both by performing it and then by omitting it; whoever did not live during the time when it was obligatory obeys by following the obligation that abrogated the earlier obligation. God said: «We see you turning your face about in the

sky, and so We make you turn to a prayer-direction that will please you. Turn your face toward the Sacred Mosque. Wherever you may be, turn your faces toward it.»¹⁵⁹

155 If someone were to ask: “Where is the indication that they were moved from one prayer-direction to another?” It is in His saying «The fools among the people will say, “What has turned them away from the prayer-direction which they used to observe?” Say, “To God belongs the place where the sun rises and the place where the sun sets. He guides those whom He wishes to a straight path.”»¹⁶⁰

156 Mālik from ‘Abdallāh ibn Dīnār, from ‘Abdallāh ibn ‘Umar: While the people were praying the morning prayer in Qubā’ someone came and said that a Qur’anic passage had been revealed to the Prophet the night before, commanding that one face the prayer-direction, so they faced it. They had been facing toward Syria, and then they turned toward the Kaaba.

157 Mālik from Yaḥyā ibn Sa‘īd, from Sa‘īd ibn al-Musayyab, who used to say: “God’s Emissary prayed sixteen months toward Jerusalem, and then the prayer-direction was changed two months before the Battle of Badr.”¹⁶¹

158 One infers the ruling for the prayer of danger from the Book, in God’s word: «If you perceive danger, pray either on foot or mounted.»¹⁶² It is not for someone praying the prescribed prayer to pray while riding except in case of danger, and God did not mention that such a person should face the prayer-direction.

159 Ibn ‘Umar, who narrated the prayer of danger from God’s Emissary, said: “If the danger is more intense than that, then pray either on foot or mounted, facing the prayer-direction or otherwise.” God’s Emissary prayed extra devotional prayers on his mount while traveling, in whatever direction it happened to be facing. This was preserved by Jābir ibn ‘Abdallāh, Anas ibn Mālik, and others. But he only prayed the required prayers, while traveling, after dismounting and facing the prayer-direction.

Ibn Abī Fudayk from Ibn Abī Dhi’b, from ‘Uthmān ibn ‘Abdallāh ibn Surāqah, from Jābir ibn ‘Abdallāh: The Prophet prayed while facing east on his mount during the raid against the Anmār tribe.¹⁶³ 160

. . .

God said: «O Prophet, urge on the believers to fight. If there are twenty steadfast men among you, they will overcome two hundred; and if there are a hundred steadfast men among you, they will overcome a thousand of those who do not believe, because they are a people who do not understand.»¹⁶⁴ Then He stated in His Book that He had canceled for them the rule that one person must battle ten and confirmed for them that one need only battle two. Accordingly, He said: «Now God has lightened your burden—He knows that there is a weakness in you. If there is a steadfast hundred they will overcome two hundred; and if there are a thousand of you they will overcome two thousand, by God’s permission. God is with the steadfast.»¹⁶⁵ 161

Sufyān reported to us from ‘Amr ibn Dīnār, from Ibn ‘Abbās, who said: “When this verse—‘If there are twenty steadfast men among you, they will overcome two hundred’—was revealed, it was prescribed for them that twenty should not flee from two hundred. Then God revealed ‘Now God has lightened your burden—He knows that there is a weakness in you. . . . They will overcome two hundred,’ and He prescribed that one hundred should not flee from two hundred.” That is just as Ibn ‘Abbās said, God willing. God clarified that in the verse, and it requires no additional exegesis. 162

. . .

God said: «Those of your women who commit indecency—call four of you as witnesses against them. If the four give their testimony, confine the women in their houses until death takes them or God appoints a way for them. If two of you commit it, punish them both; and if they repent and make amends, turn from them. God is Relenting and Compassionate.»¹⁶⁶ 163

- 164 Then God abrogated the imprisonment and the punishment provided for in His Book and said: «The fornicator and the fornicatress, scourge each one of them a hundred lashes.»¹⁶⁷ Then, Prophetic Practice indicated that the hundred lashes applied to virgins who committed unlawful sexual intercourse.
- 165 ‘Abd al-Wahhāb reported to us from Yūnus ibn ‘Ubayd, from al-Ḥasan, from ‘Ubādah ibn al-Ṣāmit, that God’s Emissary said: “Take this from me! Take this from me! God has appointed ‘a way for them.’ The virgin with a virgin: one hundred lashes and one year’s exile. The nonvirgin with a nonvirgin: one hundred lashes and stoning.”
- 166 A certain trustworthy scholar reported to us something similar to the above from Yūnus ibn ‘Ubayd, from al-Ḥasan, from Ḥiṭṭān al-Raqāshī, from ‘Ubādah ibn al-Ṣāmit, from the Prophet.
- 167 Thus, the Practice of God’s Emissary indicated that one hundred lashes were confirmed for the two free virgins and abrogated for the two nonvirgins. Moreover, stoning is confirmed for the two free nonvirgins, because of the saying of God’s Emissary—“Take this from me! Take this from me! God has appointed ‘a way for them.’ The virgin with a virgin: one hundred lashes and one year’s exile. The nonvirgin with a nonvirgin: one hundred lashes and stoning”—was revealed earlier. He used it to abrogate imprisonment and punishment for the two fornicators. When the Prophet had Mā‘iz stoned and did not lash him, and ordered Unays to go to the wife of the Aslamī man¹⁶⁸ and, if she confessed, to stone her, that indicated the abrogation of lashing for the two free nonvirgin fornicators, and it confirmed stoning for them. This is because whatever comes after everything that occurred earlier is inevitably later in time.
- 168 The Book of God, and then the Practice of His Prophet, indicate that two slaves who commit unlawful sexual intercourse are not covered by this rationale. God (blessed and exalted) said concerning female slaves: «If they commit indecency once they are properly safeguarded, they shall incur half of the punishment for other safeguarded women.»¹⁶⁹ “Half” can only refer to lashing, which

is divisible. As for stoning, which leads to death, it has no “half” because the one stoned could die from the first stone thrown at him without any additional stones, or he might not die until a thousand or more stones are thrown at him. There is no “half” that can be delimited in such a case at all. Criminal punishments correlate with death or a certain damage inflicted on the person. Such damage is correlated, in turn, with a certain number of blows or the amputation of a specific limb. This is all well known, as is the fact that stoning cannot be halved.

Al-Shāfi‘ī said: Mālik reported to us from Ibn Shihāb, from 169 ‘Ubaydallāh ibn ‘Abdallāh ibn ‘Utbah, from Abū Hurayrah and Zayd ibn Khālid al-Juhānī, that God’s Emissary was asked about the female slave who committed unlawful sexual intercourse without being married: “If she commits unlawful sexual intercourse,” he said, “lash her. Then if she commits it again, lash her. Then if she commits it again, sell her, even if only for a piece of rope.”

God’s Emissary said: “If one of your female slaves commits 170 unlawful sexual intercourse and it becomes apparent that she has, then lash her.” He did not say “stone her,” and there is no difference of opinion among Muslims concerning the fact that slaves are not to be stoned for unlawful sexual intercourse. Being “safeguarded” in the case of a female slave means her conversion to Islam.¹⁷⁰ This opinion of ours is based on an inference from Prophetic Practice and the consensus of most scholars. Since God’s Emissary said “If one of your female slaves commits unlawful sexual intercourse and it becomes apparent that she has, then lash her”—and did not say “then lash her, whether she is ‘safeguarded’ or not”—we infer that God’s saying concerning female slaves “If they commit indecency once they are properly safeguarded, they shall incur half of the punishment for other safeguarded women” means “if they convert to Islam,” not “if they are married and the marriage is consummated,” and not “if they are freed,” whether or not they are party to a marriage that is consummated.

171 If someone were to say: “I see that you apply the term ‘safeguarded’ using different meanings,” one should reply: Indeed. The lowest common denominator in regard to being “safeguarded” is that there be something beyond merely being guarded that protects against the commission of unlawful acts. Islam can protect against such things, and so, too, freedom, marriage and consummation, and imprisonment in a home. Anything that accomplishes such protection can be called “safeguarding.” God said: «We taught him how to make garments to *guard* you against your might»¹⁷¹ and «They will not fight you in a body unless they are in *well-guarded* settlements.»¹⁷² The beginning and the end of the speech both indicate that the aforementioned meaning of “safeguarded” is unrestricted in one passage but not in the other. Here,¹⁷³ being “safeguarded” means Islam, not marriage, freedom, being protected through imprisonment, or chastity. Rather, these terms merely have something in common with respect to the term “safeguarded.”



ABROGATION INDICATED BY PROPHETIC PRACTICE AND CONSENSUS

172 God (blessed and exalted) said: «Prescribed for you when death comes to one of you, if he leaves goods, are bequests for parents and kinsmen according to what is recognized as proper, as a duty on those who are God-fearing»¹⁷⁴ and «And those of you who are about to be taken in death and who leave wives should make a bequest to your wives, a provision for the year following your death without turning them out of their homes; but if they leave, there is no sin for you in what they do concerning themselves in a way that is recognized as proper. God is Mighty and Wise.»¹⁷⁵ God then revealed the inheritance share of the parents, of those relatives who

inherit after them and together with them, of the husband from his wife, and of the wife from her husband.¹⁷⁶

The two verses could have two different meanings: They could confirm that one is allowed to make bequests to parents, relatives, and spouses, and also that inheritance shares and bequests may be combined together such that those persons receive both inheritance shares and bequests. Or the two verses could mean that the specified inheritance shares abrogate the bequests. Because the two verses could have the meanings we just described, it is incumbent on scholars to seek some indication from the Book of God. If they do not find an explicit text in the Book of God, they should seek it in accounts of the Practice of God's Emissary. If they find something there, then what they accept from God's Emissary they have accepted from God, since God imposed the obligation to obey His Emissary. 173

We have found that the experts in law and those scholars of the Prophet's military campaigns with whom we have studied, among the tribe of Quraysh and others, do not disagree about the fact that the Prophet said, in the year of the Conquest of Mecca [630]: "No bequest to an heir; do not execute a Muslim for the killing of a non-believer." We have also found that they transmit this from those scholars of the Prophet's military campaigns whom they have met. It is a transmission from one large group of persons to another, and is therefore stronger in some respects than something transmitted by isolated individuals. Also, we find that scholars have reached consensus on it. 174

A certain Syrian promulgated a hadith-report, however, which is not among those confirmed by scholars of such reports. Some of its individual transmitters are unknown, so we narrated it from the Prophet with an interrupted chain of transmission. We only accepted it because of what I have already mentioned about the transmission from scholars of the Prophet's military campaigns and the consensus of most scholars on it, and even though we mentioned the hadith-report about it, we relied on the hadith-reports of 175

the scholars of the Prophet's military campaigns in general, and on people's consensus.

176 Sufyān reported to us from Sulaymān al-Aḥwal, from Mujāhid, that God's Emissary said: "No bequest to an heir."

177 We inferred—based on what I have already discussed about the transmission by the majority of the scholars of the Prophet's military campaigns, from the Prophet, of his saying "No bequest to an heir"—that the Qur'anic passage describing inheritance shares abrogated the mandate to make bequests to parents and spouses, and that it did this in conjunction with the incompletely transmitted report from the Prophet¹⁷⁷ and the consensus of the majority on that opinion. Similarly, most people hold that the mandate to make a bequest to near kinsmen is abrogated, and that the obligation to do it has lapsed. If they are heirs, then they take according to their inheritance shares; if they are not heirs, then there is no obligation to make a bequest to them. Still, Ṭāwūs and a small group along with him held that the mandate to make a bequest to parents was abrogated, but confirmed for near kinsmen.¹⁷⁸ So it was no longer permissible to make a bequest to anyone other than a kinsman. Because the verse could mean what Ṭāwūs concluded that it meant, that the bequest to near kinsmen was confirmed, since the report of the scholars of the Prophet's military campaigns only contained the saying of the Prophet "no bequest to an heir," it is incumbent on scholars, in our view, to seek some indication that is either contrary to what Ṭāwūs said about the verse, or in agreement with it.

178 We found that God's Emissary ruled in regard to six slaves who belonged to a man who had no property except them. He manumitted them at death, but the Prophet divided them up into three parts and manumitted two and left four as slaves.

179 'Abd al-Wahhāb reported that to us from Ayyūb, from Abū Qilābah, from Abū l-Muhallab, from 'Imrān ibn Ḥuşayn, from the Prophet. Prophetic Practice in the hadith-report of 'Imrān ibn Ḥuşayn provides a clear indication of the fact that God's Emissary

categorized their manumission during the manumitter's fatal illness as a bequest.

The one who manumitted them was a Bedouin Arab, and Bedouin only owned non-Arabs with whom they had no ties of kinship, so the Prophet allowed the bequest in their favor. That indicates that had bequests to nonkinsmen been invalidated, then they would have been invalidated if made to slaves, too, since in this case they had no ties of kinship to the manumitter. It also indicates that one may only make bequests amounting to one-third of one's property. It further indicates the following: A bequest that exceeds one-third of the estate is rejected; requiring a slave to work to buy his freedom is invalidated;¹⁷⁹ but the practice of dividing one's slaves into three groups and determining which group to free by drawing lots is confirmed. Bequests in favor of parents are invalidated because they are heirs, but their inheritance shares are confirmed. Whoever receives a bequest from the deceased, whether a kinsman or otherwise, is permitted to take it if he is not an heir. It is preferable in my view that one make bequests to kinsmen.

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The Qur'an contains abrogating and abrogated passages other than these. They appear in various passages of the book *Rulings of the Qur'an (Aḥkām al-Qur'ān)*.¹⁸⁰ I have only given some general examples here that could be used as the basis for inferences in cases of similar import. I think they illustrate the underlying principle sufficiently well that I do not have to mention any others. I ask for God's protection and assistance.

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After what I wrote about those examples of abrogation I have a section on knowledge of the obligations that God revealed, both fully explicated obligations and obligations revealed in general terms, and the practices of God's Emissary that are parallel to them and that pertain to them. I did this so that whoever has knowledge of the Book might know the position in which God put His Prophet in relation to His Book, His religion, and the people of His religion. They should also know that following the Prophet's command is obedience to God, that his Practice follows the Book of God in

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regard to what is revealed, and that it never contradicts the Book of God. Whoever understands this book should understand that legislative statements occur in various ways, not in one way only. What unites them all is that for scholars they can be legislative statements that are either clear or vague, but for those whose knowledge falls short they appear contradictory.



CHAPTER ON OBLIGATIONS THAT GOD REVEALED IN THE FORM OF EXPLICIT TEXTS

- 183 God (sublime His praise) said: «Those who accuse women who are safeguarded, and then do not bring four witnesses, scourge them eighty lashes, and never accept their testimony after that—they are sinners.»¹⁸¹
- 184 Al-Shāfi‘ī said: “women who are safeguarded” here means free women who have reached their majority. This indicates that “safeguarded” is a term that encompasses different meanings. He also said: «Those who accuse their wives and have no witnesses but themselves, let the testimony of one of them be to witness by God four times that he is one of the truthful, and then the fifth that the curse of God shall be on him if he is one of those who lie. But it shall avert punishment from her that she bear witness four times by God that he is one of the liars. And the fifth that the wrath of God shall be upon her if he is one of the truthful.»¹⁸² God distinguished between the ruling for the accusing spouse and others, and imposed a penal sanction on those others unless they produced four witnesses to what they claim. He also exempted the spouse from the penal sanction by having the spouses swear oaths against each other. All this indicated that, in regard to the accusers of “women who are safeguarded,” the accusers who were meant were those

who accused women who were free and had reached their majority, not the women's spouses. This, in turn, provides a further indication of what I have already discussed: The Qur'an is in Arabic. The meaning of a passage might appear unrestricted and yet be intended as restricted, and it would not be the case that one of two such verses would abrogate the other but rather that each would reflect God's ruling. One distinguishes between them when God does, and construes them in conjunction with each other when God does.

So if the spouse swears such an oath, he is exempted from the penal sanction, just as nonspouses are exempted if they bring the sufficient number of witnesses. If he does not swear the oath, and his spouse is free and in her majority, he is subject to a penal sanction. The verse concerning the oath-swearing procedure was revealed in regard to al-'Ajlānī and his wife, and the Prophet conducted the oath-swearing between them. Sahl ibn Sa'd al-Sā'idi related the procedure. Ibn 'Abbās related it, too, and Ibn 'Umar related that he attended such a procedure conducted by the Prophet. Not one of them related the language used by the Prophet when he commanded the couple to swear oaths against each other. They all, however, related rulings of God's Emissary on this topic that are not found in the form of explicit texts in the Qur'an. Among these are how he separated the two spouses, how he denied the legitimacy of the child, and his saying "If she gives birth to it and it looks thus, then it belongs to the one whom her spouse accuses." She gave birth to a baby matching that description, and he said, "His situation would be clear if not for what God related."¹⁸³ Ibn 'Abbās also related that the Prophet said, once the fifth oath had been taken, "Stop. This is now binding."

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We inferred that they would not have related or failed to relate the necessary details about this that are found in hadith-reports—and it would have been best in that respect if it had been related how the Prophet conducted the mutual oath-swearing between the parties—unless they were certain that anyone who had read the Book of God would know that God's Emissary conducted the oath-swearing

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between the parties just as God revealed it. God’s statement of the procedure—the number of oaths and the testimony to be given by each one of them—was enough for them without an account of the precise wording used by God’s Emissary when he conducted the oaths between them. Al-Shāfi‘ī said: The Book of God is utterly sufficient in regard to the oath-swearing procedure and the number of times it is to be performed. Then, a certain person related from the Prophet material about the separation of the litigants, as I have described above. We have already discussed the practices of God’s Emissary that are parallel to the Book of God.

. . .

187 God said: «Fasting is prescribed for you, as it was prescribed for those who were before you, so that you may be God-fearing, for a fixed number of days. . . . Let those of you who witness the month fast during it. Those of you who are sick . . .»¹⁸⁴ Then He clarified which month it was, saying: «It is the month of Ramadan, in which the Qur’an was revealed as a guidance to the people and as clear proofs of the guidance and of the salvation. Let those of you who witness the month fast during it. Those of you who are sick or on a journey, a number of other days. God desires ease for you, not hardship, and He desires you to complete the period and to magnify God for having guided you and to be thankful.»¹⁸⁵

188 Al-Shāfi‘ī said: I know of no earlier scholar of hadith-reports who has taken the trouble to narrate from the Prophet that the month one is obligated to fast is Ramadan, which falls between the months of Shaban and Shawwal. This is because they knew perfectly well which month Ramadan was and could easily determine that God had made it the obligatory one. They did take the trouble to memorize how one should fast and break the fast while traveling, and they memorized how one should render substitute performance and similar things for which there are no explicit scriptural passages. Nor do I know anyone who is not a scholar who needs to ask, concerning the month of Ramadan, “Which month is it?” or “Is

it mandatory to fast then or not?” This is the case for obligations that God revealed and expressed in general terms, such as their obligation to pray, give alms, and make the Pilgrimage if able to do so, and so, too, with the prohibitions against unlawful sexual intercourse, homicide, and so on.

. . .

God’s Emissary has other practices for which there is no explicit text in the Qur’an but by means of which he stated on God’s behalf what God intended. The Muslims have discussed some of their details in cases where God’s Emissary did not establish an explicitly delineated practice.¹⁸⁶ One such case is God’s saying, in regard to a man who pronounces the third and final divorce formula against his wife: «If he divorces her finally, she is not lawful to him after that, until she marries another husband. If the latter divorces her, it is no sin for the couple to come together again.»¹⁸⁷ His saying “until she marries another husband” could mean that a husband other than her first husband must marry her, and that is the meaning that springs most readily to the minds of those to whom it is addressed: if she enters into a marriage contract, she has married. It could mean, however, that the subsequent husband must consummate the marriage with her, since the term “marriage” can be applied both to consummation and to the marriage contract.

God’s Emissary said to a woman whose husband had divorced her thrice and who had married another man after him: “You are not lawful to marry until each of you tastes the other’s sweetness.” That is, not until a husband other than the first husband consummates the subsequent marriage; consummation for these purposes is marriage. If someone were to say: “Cite the report from God’s Emissary for what you have said,” one would reply:

Sufyān reported to us from Ibn Shihāb, from ‘Urwah, from ‘Ā’ishah, that the wife of Rifā’ah came to the Prophet and said: “Rifā’ah divorced me and the divorce became final. Then ‘Abd al-Raḥmān ibn al-Zabīr married me, but he’s limp as a dishrag.”¹⁸⁸

God's Emissary replied, "Do you want to return to Rifā'ah, then? No! Not until you taste of his sweetness."¹⁸⁹

- 192 Al-Shāfi'ī said: God's Emissary clarified that God made her lawful to the husband who divorces her thrice only after marriage to another husband, provided that the intervening marriage include consummation with that husband.



OBLIGATIONS ESTABLISHED BY EXPLICIT TEXTS AND IN REGARD TO WHICH GOD'S EMISSARY PROVIDED A PARALLEL PRACTICE

- 193 God (blessed and exalted) said: «When you rise to pray, wash your faces and your hands up to the elbows, and wipe your heads and wash your feet up to the ankles. If you are polluted, purify yourselves»¹⁹⁰ and «save when you are traveling, until you have washed yourselves.»¹⁹¹ He stated that ritual cleansing from major impurity is achieved through washing rather than ablutions.
- 194 God's Emissary established practices concerning how to perform ablutions just as God revealed. He washed his face and his hands to the elbows, and wiped his head and washed his feet to the ankles.
- 195 'Abd al-'Azīz ibn Muḥammad reported to us from Zayd ibn Aslam, from 'Aṭā' ibn Yasār, from Ibn 'Abbās, from the Prophet: The Prophet washed each place once.
- 196 Mālik reported to us from 'Amr ibn Yaḥyā, from his father, that he said to 'Abdallāh ibn Zayd, grandfather of 'Amr ibn Yaḥyā: "Can you show me how God's Emissary performed ablutions?" "Yes," said 'Abdallāh. He called for a vessel for ablutions and poured it out over his hands. Then he washed his hands twice each; he rinsed his mouth and nose three times; then washed his face three times, and then his hands twice each up to the elbows. Then he wiped his head

with his hands. He brought them forward and back, beginning at the front of his head, then bringing them back to the nape of his neck, and then returning them back to the place he had started. Then he washed his feet.

The apparent meaning of “wash your faces” is the least that the term “washing” can apply to, and that is once, even though it could possibly denote more. God’s Emissary instituted practices according to which one performs ablutions just once, and that accords with the apparent sense of the Qur’an: it is the least that the term “washing” can apply to, even though it could possibly denote more. He also instituted practices of performing them twice and three times. Since he established the practice that one do it once, we infer that if once did not satisfy the legal obligation, he would not have performed ablutions only once and then prayed, and, moreover, that whatever exceeded once was optional, not an obligation in regard to ablutions such that doing them fewer times would not satisfy the legal obligation. 197

This is like what I mentioned previously about such obligations. If one did without the hadith-report, one could make do with the Book, but when the hadith-report was related about the topic in question, that fact indicated that the hadith-reports followed the Book of God. Perhaps they only related the hadith-report about this because the maximum number of ablutions that God’s Emissary performed was three, and they meant to indicate that three ablutions was optional, not mandatory such that fewer would not have satisfied the legal obligation. They might also have done this because of the Prophet’s statement about this: “Whoever performs ablutions in this way”—and it was three times—“and then prays two bowings¹⁹² during which he refrains from talking to himself will have his sins forgiven.” They wanted to convey that there is reward in doing more in regard to ablutions, and that the extra acts are above and beyond what is required. 198

God’s Emissary washed his elbows and ankles, but the verse could mean either that they themselves are to be washed, or that one only washes up to them without actually washing them. Perhaps 199

they related the hadith-report as a clarifying statement for this, too. But the interpretation that is most likely, according to the apparent meaning of the verse, is that they are both to be washed.

200 This is an example of a legislative statement found in an account of Prophetic Practice that is parallel to one in the Qur'an. The examples of statements in this and in the previous topic are equivalent. By virtue of being expressed in the Qur'an, the obligation is self-sufficient as far as scholars are concerned, but the two appear inconsistent to others. God's Emissary established practices demonstrating that the major cleansing from substantive impurity included washing the genitalia, ablutions like the ablutions for prayer, and washing—and thus do we prefer that one do it. I know of no scholar whose opinions I have learned who dissents from the proposition that however one performs the major washing, as long as it is a complete washing, it will satisfy one's legal obligation, even though those scholars might choose another way of doing it. This is because the obligation in this case is the major washing, and it was not defined as precisely as the ablutions. God's Emissary instituted practices concerning what necessitates ablutions and what kind of ritual impurity requires a major washing, because some of that was not addressed in explicit texts in the Book.



OBLIGATIONS ESTABLISHED BY EXPLICIT TEXTS IN REGARD TO WHICH PROPHETIC PRACTICE INDICATES THAT HE INTENDED SOMETHING RESTRICTIVE

201 God (blessed and exalted) said: «They ask you for a pronouncement. Say, “God pronounces for you concerning distant kin: If a man perishes and has no children, but he has a sister, she receives half of

what he leaves. He inherits from her if she has no children.”¹⁹³ He also said: «Men have a share of what parents and kinsmen leave, and so, too, do women, whether it is little or much—a share laid down»¹⁹⁴ and «To each of his parents one-sixth of what he leaves, if he has a child; but if he does not have a child and his heir is his father, his mother gets a third; but if he has brothers, his mother gets a sixth after any bequest he may have made or any debt. Your fathers and your sons—you do not know which of them is nearer to benefit for you. This is an ordinance from God. God is Knowing and Wise. To you is half of what your wives leave, if they have no child; but if they have a child, you get a quarter of what they leave, after any bequest they may have made or any debt.»¹⁹⁵ And He said: «They get a quarter»¹⁹⁶ along with all the rest of the inheritance verses.

Then, Prophetic Practice indicated that God intended—in regard 202
to those brothers, sisters, children, near kin, parents, spouses,
and everyone He identified in His Book as receiving a share—to
restrict those whom he had named. The religion of the heir and the
deceased should coincide, not be different, and they should both
be resident in the Muslims’ territory, or be non-Muslims resident in
Muslim territory pursuant to a treaty that safeguards their person
and property, or they should both be pagans and inherit from each
other on the basis of their shared paganism.

Sufyān reported to us from al-Zuhrī, from ‘Alī ibn Ḥusayn, from 203
‘Amr ibn ‘Uthmān, from Usāmah ibn Zayd, that God’s Emissary
said: “No Muslim inherits from an unbeliever, and no unbeliever
from a Muslim.” Also, the heir and the deceased should both be free
persons, in addition to having Islam in common.

Ibn ‘Uyaynah reported to us from Ibn Shihāb, from Sālim, from 204
his father, that God’s Emissary said: “Whoever sells a slave who
owns property, the slave’s property belongs to the seller unless the
buyer makes it a condition of the sale.”

It is clear from the Practice of God’s Emissary that slaves cannot 205
own property and that what a slave owns is in fact owned by his

master, and that the term “property” only applies to him in the sense that it is ascribed to him, because he only has possession of it, does not own it, and will not come to own it—and indeed he does not even own himself. How could he when he himself is owned and thus capable of being sold, gifted, or inherited? God transfers the property of the deceased only to the living, and so they own what the deceased previously owned. If the slave is a father or another of those named as recipients of an inheritance share, and then is given such a share, his master acquires it from him, but without being the father of the deceased or another heir named as a recipient of an inheritance share. Thus, if we were to give a share to the slave because he is the father, we would merely have given it to the master, for whom no inheritance share is appointed, and we would have caused someone to inherit whom God did not make an heir. Thus, because of what I have discussed above, we do not make slaves inherit and not anyone else in whom there does not inhere freedom, Islam, and innocence of homicide such that he is not the killer of the deceased.

206 This is because Mālik narrated from Yaḥyā ibn Saʿīd, from ʿAmr ibn Shuʿayb, that God’s Emissary said: “The killer gets nothing.” Since it reached us that God’s Emissary said, “The killer gets nothing,” we did not make the killer an heir of the one he killed. The most lenient treatment that someone who kills with intent can receive is to be denied his inheritance shares as a punishment—together with God’s displeasure—such that he be denied the inheritance shares for disobeying God by committing homicide. What I have discussed above—that only Muslims may inherit from Muslims and that the heir must be free and not the killer of the deceased—is something about which not one of the scholars whose opinions I have come to know in this locale, or anywhere else, disagrees.

207 In their agreement concerning what we have described is binding authority that compels them not to disagree at all about the practices of God’s Emissary. This is because if the practices of God’s Emissary occupy such a position in regard to something for which

God has imposed a textually explicit obligation and indicate that the obligation applies only to some of the persons named and not others, then they function the same way in relation to passages from the Qur'an that resemble them exactly. In addition, they function the same way in relation to matters for which God has provided no textually explicit ruling. Just so, and moreover, it behooves the scholar not to doubt that they are binding, and to know with certainty that God's rulings, and then those of His Emissary, are not inconsistent and take the same course.

. . .

God (blessed and exalted) said: «Do not consume your property among you in vanity, but let there be trading by mutual consent among you»¹⁹⁷ and «That is because they have said, "Usury is no different from sales." God has made sales lawful, while He has forbidden usury.»¹⁹⁸ 208

God's Emissary prohibited some sales to which the contracting parties mutually consent. This is the case for transactions such as the exchange of gold for gold, other than in like amounts, and gold for silver in which one party pays immediately and the other delays delivery, and others of a similar nature even though transacting in such items is not risky and there is nothing of which the seller and buyer are improperly unaware. So Prophetic Practice indicated that God (sublime His praise), in the passages from the Qur'an discussed above, intended to make lawful those sales that He did not outlaw, apart from those that He outlawed using the words of His Prophet. Then, God's Emissary has instituted practices concerning sales transactions other than these, such as: A slave is sold and the seller conceals a defect from the buyer; the buyer may return the slave and keep any subsequently arising profits in exchange for bearing the risk of loss. Another case involves selling someone a slave who has his own property; in that case the slave's property belongs to the seller unless the buyer makes its transfer a condition of the sale. Another case involves the sale of date palms the fruit on which 209

has been pollinated; in such a case, the fruit belongs to the seller unless the buyer makes it a condition of the sale. People are bound to adhere to these rulings because God has made it binding on them to comply with the commands of God's Emissary.



OBLIGATIONS EXPRESSED IN GENERAL TERMS

- 210 God (blessed and exalted) said: «Prayer is a prescription at fixed times for the believers»¹⁹⁹ and «Perform the prayer and pay alms.»²⁰⁰ He also said to His Prophet: «Take alms from their possessions by which you might purify them and make them clean.»²⁰¹ And He said: «It is the people's duty to God to make the Pilgrimage to the Sacred House—for those able to do so.»²⁰²
- 211 Al-Shāfi'ī said: God confirmed the obligations to pray, give alms, and perform the Pilgrimage in His Book, and He clarified how to perform those obligations using the words of His Prophet. God's Emissary let it be known that the number of obligatory prayers was five, and that the number of bowings for the noon, afternoon, and evening prayers was four and four again if one was in a settlement, that the sunset prayer was three, and the dawn prayer two. He also established a practice to the effect that one recite the Qur'an in all of them, and that such recitation be made aloud in the sunset, evening, and dawn prayers, and that it be done silently in the noon and afternoon prayers. He also established the practice that one say "God is great" at the beginning of prayer and the peace at the end,²⁰³ and that one say "God is great," then the recitation, then the bowing, then two prostrations after the bowing, and other of their details. He established practices for those who are traveling: allowing them, if they wish, to shorten every prayer involving four

bowings; confirming that the sunset and dawn prayers be done in their usual way just as when one is in a settlement; and requiring that they all be directed toward the prayer-direction, whether while traveling or resident somewhere, except that one can make do with only one bowing in case of danger.

He established practices that made extra devotional prayers equivalent to the required prayers in this regard: They are only valid in a state of ritual purity and may not be performed without a Qur'anic recitation and the other things necessary for the prescribed prayers, such as prostration, bowing, and facing the prayer-direction when in a settlement, in the countryside, or while traveling. Someone who is riding may perform extra devotional prayers in whatever direction his mount happens to be facing. 212

Ibn Abī Fudayk reported to us from Ibn Abī Dhi'b, from 'Uthmān ibn 'Abdallāh ibn Surāqah, from Jābir ibn 'Abdallāh: During the raid against the Anmār tribe, God's Emissary prayed while facing east on his mount. 213

Muslim reported something similar to that to us from Ibn Jurayj, from Abū l-Zubayr, from Jābir, from the Prophet. I do not know whether Jābir named the Anmār tribe or not, or whether he said "he prayed while traveling." 214

God's Emissary established practices for the number of bowings and prostrations during festival prayers and rain prayers. He also instituted practices for the eclipse prayer and added a bowing to it in addition to those in the regular prayers, making it into two bowings for each regular bowing. 215

Mālik reported the same account to us from Yaḥyā ibn Sa'īd, from 'Amrah, from 'Ā'ishah, from the Prophet. 216

Mālik reported the same account to us from Hishām, from his father, from 'Ā'ishah, from the Prophet. 217

Mālik reported the same account to us from Zayd ibn Aslam, from 'Atā' ibn Yasār, from Ibn 'Abbās, from the Prophet. The Prophet's prayer is related from 'Ā'ishah and Ibn 'Abbās in these hadith-reports with different wordings, but they all agree that he prayed 218

with two bowings in the eclipse prayer, two bowings for every regular bowing.

219 God said concerning prayer: «Prayer is a prescription at fixed times for the believers.»²⁰⁴ God's Emissary clarified what those times were on God's behalf, and he performed the prayers at their proper time. At the Battle of the Parties, however, he was besieged and not able to pray at the proper time, so he postponed the prayer because of a valid excuse until he was able to pray the noon, afternoon, sunset, and evening prayers in one session.²⁰⁵

220 Muḥammad ibn Ismā'īl ibn Abī Fudayk reported to us from Ibn Abī Dhi'b, from al-Maqburī, from 'Abd al-Raḥmān ibn Abī Sa'īd, from his father: "We were prevented from praying, at the Battle of the Trench,²⁰⁶ until after the sunset prayer, well into the night, until we had the fighting averted from us, as referred to in God's word «God averted fighting from the believers. God is Strong and Mighty.»²⁰⁷ God's Emissary called for Bilāl and ordered him to make the call to prayer, and he held the noon prayer, which he led, and it was fine, just as if it had been done at its appointed time. Then he did so for the afternoon prayer and prayed it in the same way, then the sunset prayer in the same way, and then the evening prayer in the same way, too. That was before the passage about the prayer of danger was revealed: «either on foot or mounted.»²⁰⁸ So Abū Sa'īd clarified that this occurred before God revealed to the Prophet the verse in which the prayer of danger is mentioned.

221 The verse in which the prayer of danger is mentioned is God's word «When you travel in the land, it is no sin for you to curtail your prayer, if you perceive a danger that those who disbelieve may do you mischief. Those who disbelieve are a manifest enemy for you.»²⁰⁹ He also said: «When you are among them and lead them in prayer, let one group of them stand with you, and let them take their weapons. Once those praying have prostrated themselves, let them fall to the rear, and let the other group who have not prayed come and pray with you.»²¹⁰

Mālik reported to us from Yazīd ibn Rūmān, from Ṣāliḥ ibn Khawwāt, from someone who prayed the prayer of danger together with God’s Emissary at the Battle of Dhāt al-Riqā’: One group lined up with him while another group faced the enemy. He led those with him in prayer for one bowing, then he straightened up and they completed the prayer themselves and then left and lined up facing the enemy. The other group came and he led them in prayer for the one bowing that remained of his own prayer, and then he sat up in his place and they completed the prayer themselves, and then he led them in saying the peace. 222

Someone transmitted to us a hadith-report like that of Yazīd ibn Rūmān, having heard ‘Abdallāh ibn ‘Umar ibn Ḥafṣ mention it from his brother ‘Ubaydallāh ibn ‘Umar, from al-Qāsim ibn Muḥammad, from Ṣāliḥ ibn Khawwāt, from his father Khawwāt ibn Jubayr, from the Prophet. 223

This provides an indication of what I have already described in this book: if God’s Emissary establishes a practice, and then God creates a new ruling in regard to that practice that abrogates it or an exception that alleviates it somewhat, then God’s Emissary will provide another practice by means of which he provides a binding authority that obligates people to move from his old practice to his new subsequent practice. God abrogated the postponement of the prayer until after its appointed time in cases of danger and had them pray it, instead, as God had revealed and in accordance with the practice instituted by His Emissary, at its appointed time. God’s Emissary abrogated his practice concerning its postponement, pursuant to the obligation imposed by God in His book, and then God’s Emissary prayed it according to his practice, as I have just explained. 224

Mālik reported to us from Nāfi’, from Ibn ‘Umar, I believe from the Prophet, that he mentioned the prayer of danger and said: “If the danger is more intense than that, then pray either on foot or mounted, facing the prayer-direction or otherwise.” 225

- 226 Someone reported to us an account similar in import from Ibn Abī Dhi'b, from al-Zuhri, from Sālim, from his father, from the Prophet. He did not doubt that it was from his father and that it had been attributed to the Prophet.²¹¹
- 227 So the Practice of God's Emissary indicates what I have already explained: the prayer-direction for the prescribed prayers is always in accordance with the obligation respecting it except on those occasions when it is not possible to pray toward it, and that is during combat, or while fleeing, and under similar circumstances during which prayer is not possible. In this regard, Prophetic Practice also confirms that one not omit the prayer during its appointed time, and that the prayer be performed in whatever way may be feasible for the one praying.



CONCERNING ALMS

- 228 God said: «Perform prayer and pay alms.»²¹² God also said: «Those performing prayer and paying alms»²¹³ and «Woe to the worshippers who are heedless of their prayers; who make a show, but withhold assistance.»²¹⁴ A certain scholar said that this refers to obligatory alms.
- 229 God also said: «Take alms from their possessions, by which you might purify them and make them clean, and pray for them. Your prayers are a comfort for them. God is Hearing and Knowing.»²¹⁵
- 230 This verse is expressed in unrestricted terms, applying to property in general. It is possible to interpret it as pertaining to some kinds of property and not others, however, and Prophetic Practice indicates that alms are in fact due on some kinds of property and not others.

Since property is of different kinds, including livestock, God's Emissary assessed alms on camels and goats and commanded, as far as we have been informed, that one assess cattle in particular, apart from other livestock. Then he assessed them at different amounts, just as God decreed through the words of His Prophet. People had livestock that included horses, donkeys, mules, and other animals, and since God's Emissary did not assess anything from those, and established the practice that no alms be levied on horses, we infer that alms are to be assessed on that from which he took, and from what he commanded to be assessed, and not from other things. 231

People had produce and crops, too. God's Emissary levied alms on dates and grapes by estimating their amount while on the tree or vine, without distinguishing between them, and he took the tithe from both if they were watered by rain or a spring, and half the tithe if watered manually. Some scholars have levied them on olives, by analogy from dates and grapes. People continue to have many crops other than dates, grapes, and olives: walnuts, almonds, figs, and others. Since God's Emissary did not assess anything against those, and did not command that anyone do so, we infer that the obligation from God concerning alms was applicable to some crops and not to others. 232

People also used to plant²¹⁶ wheat, barley, sorghum, and other varieties of grains as well, and we have learned that God's Emissary levied on wheat, barley, and sorghum. Those before us levied against millet, thin-husked barley, Yemeni wheat, rice, and everything else that people planted and made into provisions, such as bread, wheat flour, barley flour, and ground pulses like chickpeas and lentils, which are thus suitable for bread, gruel, and for eating with bread. All this was done following the precedent of those who went before, and based on analogies from those things on which it is confirmed that God's Emissary levied alms. These are all within the scope of what he took alms from, since people plant them in order to conserve them as provisions. 233

234 People have produce other than this, but God's Emissary did not levy alms on it and neither did anyone after God's Emissary of whom we know. Such things do not belong to the category of items on which he levied alms; they are like garden-cress seeds, psyllium,²¹⁷ coriander, safflower seeds, and similar things. One need pay no alms for them, and this fact indicates that alms are assessed against some kinds of produce but not others.

235 God's Emissary imposed the obligation to pay alms for silver, and the Muslims levied them on gold after him as well, either on the basis of a report from the Prophet that has not reached us or by analogy, on the grounds that gold and silver are the people's medium of exchange, which they accumulate and which they accept as payment for what they buy and sell to each other in the various countries, both before and after the coming of Islam.

236 People have other metals than those, to wit, copper, iron, and lead. When neither God's Emissary nor anyone after him levied alms on them, we passed them over, too, following precedent. Moreover, one may not analogize in those cases from gold and silver, which are generally recognized as a valid species of payment everywhere, to other metals that are not covered by the same rationale. One need pay no alms for them, and yet it is valid to buy those other metals using gold, silver, and other things, with delayed payment for a defined term, or at a fixed weight.

237 Sapphires and rubies²¹⁸ are worth more than gold and silver, but since God's Emissary did not levy alms on them and did not command anyone else to do so, and neither did anyone after him of whom we know—for they are luxury items²¹⁹ and cannot be used at all to set prices for consumable goods because they are not considered a medium of exchange—one does not levy alms on them.

238 Then there is what a large group have transmitted from God's Emissary concerning alms from livestock, to wit, that he assessed it once a year. God said: «And give its due portion on the day it is harvested»²²⁰ and God's Emissary established the practice that alms be levied on any agricultural produce subject to them, according to

God's ruling (sublime His praise), on the day one harvests it, and not at any other time.

He also established the practice that one-fifth be levied on the ore of precious metals, which indicates that it should be done on the day that it is actually mined, and not at some other time. 239

Sufyān reported to us from al-Zuhrī, from Ibn al-Musayyab and Abū Salamah, from Abū Hurayrah, that God's Emissary said: "One should pay the fifth for the ore of precious metals." If not for the indication from Prophetic Practice, the apparent sense of the Qur'an would be that all types of property are the same and that alms is payable for all of them, not for some rather than others. 240



CONCERNING THE PILGRIMAGE

God imposed the obligation to perform the Pilgrimage on those who are able. The Prophet is quoted as saying that being able includes having provisions and transportation. God's Emissary also reported about the timing of the Pilgrimage, how one ritually announces one's approach,²²¹ the applicable practices, what clothing and scents the pilgrim in a ritual state should avoid, and other parts of the Pilgrimage such as 'Arafah, al-Muzdalifah, casting stones,²²² shaving the head, circumambulation of the Kaaba, and other things. If the only instance of the practice of God's Emissary functioning together with God's Book that one knew about was the one that we just mentioned, in which God's Emissary instituted practices to explain the meaning of what God revealed in general terms, and if one then correctly understood what I have described about God's imposition of certain obligatory acts, and His making things lawful and unlawful, and including and excluding certain things, and appointing certain times for certain acts, and leaving other matters unaddressed, then 241

binding authority would be established for him to the effect that the Practice of God's Emissary, if it occupies that position alongside the obligations imposed by God in His Book once or more, must do so always.

- 242 One should infer, moreover, that a practice of the Prophet never contradicts the Book of God and that such a practice—though it might concern something for which there is no explicit scriptural proof-text—is binding because of what I have explained, together with my additional discussion of God's imposition of the obligation to obey His Emissary. One must know that God did not grant this to any creature except His Emissary, and one must always make the opinion and deeds of everyone else subordinate to the Book of God and then to the Practice of His Emissary. One should also know that if an opinion were transmitted from a scholar that in any way contradicted a practice established by God's Emissary, then if that scholar had known that particular practice of God's Emissary, he would not have contradicted it and would have moved away from his own opinion in favor of one based on the Prophet's Practice, God willing. If he did not do that, he would receive no reprieve. How could he, when God has furnished authorities for situations similar to this for His creatures that prove His imposition of the obligation to obey the Prophet, and clearly stated in what position He put him in regard to the receipt of revelations, His religion, and the people of His religion?



CONCERNING WAITING PERIODS

- 243 God said: «Those of you who are taken in death and leave wives, the wives shall wait by themselves for four months and ten days»²²³ and «Divorced women shall wait by themselves for three menstrual

cycles»²²⁴ and «With those of your women who have reached menopause, if you have doubts, their waiting period is three months; likewise the barren. For pregnant women, the period shall be until they give birth.»²²⁵ A certain scholar has said: “God has made it necessary for the widow to wait four months and ten days, and He mentioned that the term for the pregnant woman lasts until she give birth. If, however, she combines both pregnancy and widowhood, she should fulfill both waiting periods simultaneously just as she should simultaneously fulfill any two other obligations to which she is subject, in my view.”

When God’s Emissary said to Subay’ah bint al-Ḥārith, who had given birth a few days after her husband’s death, “You are lawful, so marry!” that indicated that the waiting periods for widowhood and divorce that are measured in menstrual cycles and months were intended only for women who were not pregnant. If there is a pregnancy, then no other waiting period applies.

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CONCERNING WOMEN UNLAWFUL TO MARRY

God said: «Forbidden to you are your mothers; your daughters; your sisters; your paternal aunts; your maternal aunts; brother’s daughters; sister’s daughters; those who have become your mothers by suckling you; your sisters by suckling; your wives’ mothers; your stepdaughters who are in your care, born to wives with whom you have consummated marriage, but if you have not consummated the marriage, it is no sin for you to marry the daughters; the wives of your sons who are from your own loins. It is also forbidden that you should have two sisters together, except for cases that have happened in the past. God is Forgiving and Merciful. Also forbidden are married women, except what your right hands possess. That is

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a decree from God for you. Lawful to you are women other than those just mentioned, for you to seek with your wealth, acting properly and not improperly. The wives that you enjoy thereby, give them their wages. This is a duty. There is no sin for you in what you may agree with them after that duty. God is Knowing and Wise.»²²⁶

246 This verse could have two different meanings. One is that only the women that God identified as female family members are forbidden, and those about whom He was silent are lawful by reason of His silence and because of His saying “Lawful to you are women other than those just mentioned.” That meaning would be the apparent sense of the verse. It is clear in the verse that the prohibition of those combinations has a different purpose than the prohibition against marrying mothers. So what He named as lawful is indeed lawful, and what He named as unlawful is indeed unlawful, and the combination He prohibited, to wit, two sisters, is just as He prohibited it. God’s prohibition against their being combined indicates that he forbade such combinations, that each on her own would be presumptively lawful, and that others, such as mothers, daughters, paternal aunts, and maternal aunts, would be presumptively unlawful.

247 The meaning of His saying “Lawful to you are women other than those just mentioned”—that is, other than those women whom He named as being presumptively forbidden, and whoever is in a similar situation by reason of fosterage—is that one marry them in a way that is otherwise lawful.

248 If someone were to ask: “What indicates that?” one should reply: Women are generally permitted to be taken in marriage, though it is not lawful to marry more than four of them at once. If someone marries a fifth, then that marriage is annulled. None of them is lawful without a valid marriage. The fifth is lawful in one sense, just as a single wife would be, according to the purport of His saying “Lawful to you are women other than those just mentioned,” that is, in the sense according to which marriage is in general lawful, and on condition that it be engaged in lawfully, but it

is not lawful absolutely. Thus, the marriage of a man to a woman does not make his marriage to her paternal or maternal aunt unlawful in every circumstance in the way that God outlawed marrying a woman's mother in all circumstances. The paternal and maternal aunt are also covered by this rationale, according to which marriage to them is lawful in general, but only to the extent that it is otherwise lawful under all the facts and circumstances. Similarly, it is lawful for a man to marry a fifth wife, as long as he first divorces the fourth wife, and also to marry the paternal aunt, as long as he first divorces her brother's daughter.



CONCERNING UNLAWFUL KINDS OF FOOD

God said to His Prophet: «Say, “I do not find in what is revealed to me anything that is unlawful for someone to eat, unless it is carrion or blood spilled out or the flesh of a pig—for that is an abomination—or something ungodly killed in the name of someone other than God.”»²²⁷ 249

The verse could mean two different things. One is that the only foods that God prohibited are those that He made the subject of the above exception. That is the meaning that would first come to mind for anyone addressed by this verse: that only what God has made forbidden is unlawful. One would call that the most readily apparent of the meanings, the least restrictive, and the most likely. It is also the meaning that scholars would be obligated to profess—if it were possible for the verse to have a different meaning—unless the Prophet's Practice presented itself and indicated that the verse could possibly have some other meaning. In such a case, scholars would hold that this other meaning is what God (blessed and exalted) intended. 250

251 One may interpret the Book of God or accounts of the Prophet's Practice restrictively only on the basis of some indication in one or both of them. Moreover, one does not offer a restrictive interpretation unless the verse in question could be construed as conveying that restrictive sense. Passages that cannot bear such interpretations are not to be interpreted in ways that they cannot support. It is possible that God's saying "I do not find in what is revealed to me anything unlawful to the eater of it" refers to something about which God's Emissary was asked and nothing else. It is also possible that it means more generally "among the things that you customarily eat" and that meaning is preferable, based on an inference from Prophetic Practice.

252 Sufyān reported to us from Ibn Shihāb, from Abū Idrīs al-Khawlānī, from Abū Tha'labah, that the Prophet forbade the eating of every predatory animal with fangs.

253 Mālik reported to us from Ismā'īl ibn Abī Ḥakīm, from 'Abīdah ibn Sufyān al-Ḥaḍramī, from Abū Hurayrah, from the Prophet: "The eating of any predatory animal that has fangs is unlawful."



CONCERNING THAT FROM WHICH WIDOWS MUST ABSTAIN DURING THE WAITING PERIOD

254 God said: «Those of you who are taken in death and leave wives, the wives shall wait by themselves for four months and ten days. When they have reached their term, there is no fault for you in what they do concerning themselves in the way that is recognized as proper. God is informed of what you do.»²²⁸ God stated that widows must undergo a waiting period and that if they complete it, then they may do whatever is proper concerning themselves. He did not state that a widow must avoid anything during the waiting

period. The apparent meaning of the verse is that the woman subject to the waiting period should abstain only from taking a husband and should remain in her home—thus according to the Book. The verse could, however, be construed to mean that she should abstain from taking a husband, and that in abstaining from taking a husband she should abstain from other things as well, such as perfume and jewelry, that would otherwise have been permitted to her before the waiting period.

So when God's Emissary established the practice that the widow abstain from perfume and other things during the waiting period, it became incumbent on her to abstain from perfume and other things by reason of the obligation imposed by Prophetic Practice. Abstaining from taking a husband and residing in her husband's home are done pursuant to both the Book and Prophetic Practice. The account of Prophetic Practice in this instance could mean what it means in others: it clarifies, on God's behalf, how she should abstain from things. This is just as it clarified prayer, alms, and the Pilgrimage. It is also possible that God's Emissary established practices concerning situations for which God has provided no explicit textual ruling.

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CHAPTER ON PROBLEMS AFFECTING HADITH-REPORTS

Al-Shāfi'ī said: Someone said to me: "We find some of the hadith-reports from God's Emissary to have a textually explicit counterpart in the Qur'an and others to have a counterpart in the Qur'an which is like them only in a general way. Some are more expansive than what is in the Qur'an, while in regard to others there is nothing in the Qur'an at all. Still other hadith-reports are in accord with each

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other and others contradict each other because they contain abrogating and abrogated rulings. There are others, however, that contradict each other and yet that contain no indication of abrogation. Still others contain a prohibition from God's Emissary. In respect of these, you say, 'That which he has prohibited is forbidden.' But in the case of others which have a prohibition from God's Emissary, you say, 'His prohibition and his command are optional, and they do not indicate that something is absolutely forbidden.' Then, we find you adopting some of these contradictory hadith-reports and not others. We also find you performing analogies on the basis of some of his hadith-reports, but then your analogies based on them are drawn inconsistently, while you refuse to perform analogies based on some hadith-reports at all. So, on the basis of what authority do you perform or not perform such analogies? Then you differ yet again among yourselves. Some of you pass over some of his hadith-reports and yet adopt the very like of what you rejected even though its chain of transmitters is weaker."²²⁹

257 Al-Shāfi'ī said: I replied to him: Every practice established by God's Emissary that stands alongside the Book of God agrees with God's Book, by agreeing either with an explicit scriptural passage just like it or, in the case of a scriptural passage expressed in general terms, by clarifying it on God's behalf. Such clarification results in a clearer explanation than the scriptural passage expressed in general terms on its own. As for the practices that God's Emissary establishes concerning matters not dealt with in an explicit text in the Book of God, we follow them by virtue of God's imposing the obligation to obey the commands of God's Emissary in general.

258 As for those of his hadith-reports that involve instances of abrogation, they are just as when God, in regard to His commands generally, abrogates a ruling in His Book with another like it from His Book. Similarly, the Practice of God's Emissary is abrogated by his own Practice. I then reminded him of some of the explanations of these matters that I had written previously in my book.²³⁰

Regarding hadith-reports that seem inconsistent and which themselves do not indicate that abrogation has occurred, all the Prophet's commands are in agreement with each other and valid, without any contradiction between them. God's Emissary was an Arabic speaker and a native Arab. The Arabs might say something in an unrestricted way and intend it to apply unrestrictedly, or unrestrictedly and intend it to apply in a restrictive way, as I have previously explained to you in regard to the Book of God and accounts of the practices of His Emissary. The Prophet might be asked about something and answer only to the extent required by the terms of the question, and yet the one reporting this from him might promulgate the report in great detail even though the report itself was abbreviated, and thus the transmitter would convey the report with part of its meaning but also without part of it, too. Also, someone might transmit a hadith-report from the Prophet for which the transmitter had arrived in time to hear the answer but not the question, even though the true meaning of the Prophet's answer would only be indicated to him by his knowledge of the reason for the answer being expressed in the way it was.

The Prophet might institute a practice concerning one thing, and then another in regard to a completely different situation, while some of those who heard it might not be clear about the difference between the two situations for which he instituted those practices. Or he might institute a practice whose underlying point is also found in an explicit text and someone would memorize this, and then he might institute a practice with an underlying point that differs from it in one sense and agrees with it in another, because of the two different situations, and someone else would memorize the account of that practice. If each of them conveys what he has memorized, then some listeners might see therein a contradiction even though there is nothing contradictory about it. The Prophet might also institute a practice the account of which is expressed in unrestrictive and general terms, making something unlawful or lawful, and then furnish another that differs completely from what

was expressed in general terms. In such a case, one should infer that when he made something unlawful he did not intend what he had previously made lawful, and that when he made something lawful he did not intend what he had previously made unlawful. There are instances similar to all of these in what we have written above about God's rulings that are expressed in general terms.

261 Moreover, the Prophet institutes practices and then abrogates them by means of other practices. He never fails to make clear when he abrogates one instance of his Practice by means of another. It sometimes happened, however, that someone forgot some of the accounts of abrogating practices instituted by God's Emissary, and only memorized one of the two accounts concerning an abrogated ruling, separately from the person who heard the other account from God's Emissary. But the two instances would not escape the notice of the entirety of scholars such that it could not be found among them if sought out.

262 Everything that I have just mentioned should be construed in accordance with the practices that God's Emissary has instituted. Distinctions should only be made when he has made a distinction. It is mandatory to obey him in all the diversity of the practices that he has established. One should not ask, "What is the difference between this and that?" To ask such a question in regard to distinctions that God's Emissary has made can only be due either to ignorance on the part of whoever so asks or to doubt, which is worse than ignorance. The only remedy for this is to show obedience to God's Emissary by following his precedent.

263 When in certain matters there seems to be only inconsistency, this can only be because the accounts of the Prophet's Practice were not memorized in sufficient detail, as I have explained above, and are thus viewed as contradictory; or because that part of the reason that would clarify them for us—as happens in other cases—is obscured in this case; or because it results from a misapprehension on the part of a transmitter. We never find reports from him that seem contradictory without finding, upon careful examination, a

way to show that they are not, in fact, contradictory. Rather, they fall into the categories that I described for you above. We might find an indication of which account is better confirmed, and which is not, by using techniques for confirming hadith-reports,²³¹ so that the two hadith-reports to which contradiction is imputed are not of equal weight, and consequently we adopt the better confirmed of the two. Or there is some indication which of the two is better confirmed in the Book of God or the Practice of His Prophet or other prooftexts that we have mentioned above, so that we adopt the one that is stronger or should preferably be confirmed on account of such indications. We never find two hadith-reports from the Prophet that appear contradictory without there being some solution in regard to both, or an indication for one of them of one of the kinds I have described, either through agreement with a scriptural prooftext, some other practice of the Prophet, or some other indications. What God's Emissary prohibited is unlawful unless there is some indication from him that he intended thereby something other than declaring it unlawful. Finally, as for engaging in analogical reasoning on the basis of the practices of God's Emissary, the principle is that there are two ways to do it, and then one of them has further ramifications.

“What are the two ways?” he asked. I said: God subjected His creatures to religious obligations by means of His Book, and through the words of His Prophet, by the means and in the ways that He had foreordained, for the purposes that He willed. No one may repel His judgment²³² to subject them to religious obligations. In this regard, God's Emissary sometimes indicates to them the underlying reason behind God's subjection of them to such obligations. Other times they may find that reason in a report from God's Emissary, if nothing else was revealed that was covered by the rationale behind His subjecting them to a particular obligation. In that case, it is incumbent on scholars to construe it in accordance with Prophetic Practice, if covered by that same rationale, and this is what has many, many ramifications.²³³

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265 The second way is that God makes something lawful for them in general terms and then makes some specific part of it illegal. They then hold what is lawful to be lawful generally but make that specific thing unlawful and do not base any analogies on it, that is, on the smaller part that is unlawful, because the greater part of it is lawful, and basing an analogy on the greater part of something is more appropriate than doing so on the smaller part. The same applies if God makes something unlawful generally and then makes a part of it lawful, or if He imposes some obligation and then God's Emissary²³⁴ lightens the obligation in particular situations. As for drawing analogies, we do so based on an inference from the Book, Prophetic Practice, and non-Prophetic reports.

266 As for whether we go against a hadith-report from God's Emissary that is confirmed as coming from him, I hope that we not be found guilty of that, God willing. No one has the right to do that. Still, it could happen that a man be ignorant of Prophetic Practice and have an opinion that contradicts it, not because he deliberately sets out to oppose it, but people are sometimes unaware of things or mistaken in their speculative interpretations.

267 Someone said to me: "Give me an example from every category that you have just described that will provide a comprehensive overview of what I have asked about, but will not give me so much information that I forget it. Start with abrogation involving the Prophet's practices and then give an example of such a practice where there is a parallel passage from the Qur'an, even if you have to repeat some of what you have already discussed."

268 I said to him: The first obligation that God imposed on His Emissary regarding the prayer-direction was that he turn toward Jerusalem for prayer. Jerusalem was the prayer-direction; it was not lawful for anyone to pray in any direction but that one during the time when God's Emissary was turning toward it. When, however, God abrogated the prayer-direction of Jerusalem and made His Emissary and the people face toward the Kaaba, the Kaaba became the prayer-direction and it was not lawful for any Muslim to turn toward

any other for the prescribed prayers, except in the case of danger; and it was no longer lawful to turn toward Jerusalem. Each was correct in its time. Jerusalem, from when the Prophet turned toward it until he was turned away from it, was the correct prayer-direction, and then the Sacred House became and remains the correct prayer direction, until the Day of Resurrection. This is how all instances of abrogation are in the Book of God and accounts of the Practice of His Prophet.

In addition to providing you with a clarifying statement about abrogation in the Book and Prophetic Practice, this indicates to you that if the Prophet established a practice which God then caused him to abandon, the Prophet would then establish another practice that people would adopt after the one he was made to abandon so that the instance of abrogation would not be lost on the entirety of the people and so that they would not settle on what was abrogated. This also functions to preclude the false impression that someone who is ignorant of the Arabic language, or of the fact that Prophetic Practice stands alongside the Book or clarifies the Book's meanings, might hold, to wit, that when God's Emissary establishes a practice and there is something relevant to it in the Book, the Book could abrogate Prophetic Practice. 269

"Is it possible," he asked, "for Prophetic Practice to contradict the Book in this case?"²³⁵ No, I said, because God (sublime His praise) established binding authority for his creatures in two ways, both of which have their foundation in the Book: His Book, and then the Practice of His Prophet, which God obliged people to follow in His Book. It is not permissible for God's Emissary to establish a binding practice that is then abrogated without establishing another that abrogates it. One comes to know which abrogates the other by whether it is the later of the two. Most abrogating passages in the Book of God are known only from indications in accounts of the practices of God's Emissary.²³⁶ Since Prophetic Practice indicates abrogating passages in the Qur'an and distinguishes between those and what is abrogated, a Prophetic practice could not properly 270

be abrogated by a passage from the Qur'an unless God's Emissary instituted a new practice that abrogated his original practice, so that those among God's creatures for whom He has provided binding authority would not become confused.

271 He said, "What if someone were to ask: 'Whenever I find the Qur'an to have an apparent, unrestricted sense, and then I find a practice that could either clarify the Qur'an or contradict its apparent meaning, should I then conclude that the practice in question has been abrogated by the Qur'an?'"

272 No scholar would say that, I replied. "Why not?" he asked. Because, I replied, God has imposed the obligation on His Prophet to follow what He revealed to him, borne witness to his being rightly guided, and imposed on people the obligation to obey him. After all, the language is, as I have explained above, susceptible to ambiguity: the Book of God is revealed with passages that appear unrestricted and yet are intended as restricted, that appear restricted and yet are intended as unrestricted,²³⁷ and that contain general obligations that God's Emissary explains in specific terms. Accordingly, Prophetic Practice occupies a position relative to the Book of God such that Prophetic Practice would never contradict it, and in fact Prophetic Practice is never anything but in accord with it, containing the like of what is in His Revelation, or explaining in specific terms the meaning of what God intended. In every instance it follows the Book of God.

273 "Can you cite for me some authority for what you have said about the Qur'an?" he asked. So I mentioned to him some of what I have presented above in the chapter on the Prophetic Practice's being parallel to the Qur'an:²³⁸ the fact that God imposed the obligation to pray, give alms, and make the Pilgrimage, and then God's Emissary explained how to perform the prayer, how many times to do it, its appointed times, and the rites associated with it; and how much property to give as alms, and which property is not subject thereto, and which is, and when to give them; and how to perform the Pilgrimage, and what is to be avoided in regard thereto, and

what is permitted. I also mentioned God's word «The thief, male and female: cut off their hands»²³⁹ and «The fornicator and the fornicatress, flog each one of them a hundred lashes»²⁴⁰ to him. I also mentioned that when God's Emissary established the practice that amputation of the hand applied only to those who stole a quarter dinar and above, and that flogging applied only to free persons who were virgins, not free nonvirgins or slaves, God's Emissary's Practice indicated that God intended a restricted class of fornicators and thieves, even though the apparent meaning of the language in question was unrestricted in regard to such persons.

“In my view,” he said, “it is just as you have described. Can you cite some authority to counter those who narrate that the Prophet said, ‘Whatever comes to you from me, compare it to the Book of God. Whatever agrees with it, I said; whatever contradicts it, I did not say.’” 274

I said to him: No one whose hadith-reports are confirmed as reliable, whether in regard to unimportant or important matters, narrated that report. Indeed, we would be taken to task for deeming the hadith-reports of such a one as confirmed in regard to anything. Moreover, that narration has an interrupted transmission from an unknown individual, and we do not accept such narrations about anything. “Is there,” he asked, “a narration from the Prophet that supports your view?” Yes, I replied. 275

Sufyān reported to us that Sālim Abū l-Naḍr reported to him that he had heard ‘Ubaydallāh ibn Abī Rāfi‘ transmit, from his father, that the Prophet said: “I had better not find any of you resting on his bench when a command that I have issued comes, whether commanding or prohibiting something, and saying, ‘I don’t know—we only follow what we find in the Book of God.’” Al-Shāfi‘ī said: God's Emissary was severe with people who rejected his commands because God had imposed on them the obligation to follow him. 276

“Give me a clear example,” he asked, “of something expressed in general terms in respect of which scholars, or most of them, have reached consensus in favor of your view, and in which there 277

is a Prophetic practice together with something from God's Book, and where it is possible that the practice and the Book in combination indicate that the Book is to be read restrictively even though its apparent meaning seems unrestricted." Yes, I replied, what you have already heard me relate in my book.²⁴¹ "Repeat some of it," he requested.

278 I said: God said: «Forbidden to you are your mothers; your daughters; your sisters; your paternal aunts; your maternal aunts; brother's daughters; sister's daughters; those who have become your mothers by suckling you; your sisters by suckling; your wives' mothers; your stepdaughters who are in your care, born to wives with whom you have consummated marriage, but if you have not consummated the marriage, it is no sin for you to marry the daughters; the wives of your sons who are from your own loins. It is also forbidden that you should have two sisters together, except for cases that have happened in the past. God is Forgiving and Merciful. Also forbidden are married women, except what your right hands possess. That is a decree from God for you. Lawful to you are women other than those just mentioned.»²⁴²

279 God mentioned those who were forbidden, then said, "Lawful to you are women other than those just mentioned," and God's Emissary said: "Do not combine a woman and her paternal aunt, or her maternal aunt, in marriage." I know of no one who disagrees that this statement of the Prophet should be followed. This indicates two things. One is that the Practice of God's Emissary does not in any circumstance contradict the Book of God; rather, it clarifies its unrestricted and its restricted passages. The other is that they accepted uncorroborated reports from him; we know of no one who narrated this in a credible way from the Prophet except Abū Hurayrah.

280 "Is it possible in your view," he asked, "that that hadith-report could contradict the Book's apparent meaning in any respect?" No, I said, and neither could any other such narrative. "Then what does it mean," he inquired, "when God says 'Forbidden to you are your

mothers'? For he mentioned that it was forbidden and then said: 'Lawful to you are women other than those just mentioned.' I said: He mentioned those who were forbidden under all circumstances, such as mothers, daughters, sisters, paternal aunts, maternal aunts, brothers' daughters, sisters' daughters, and everyone who is forbidden under all circumstances because of lineage and suckling, and then He mentioned those whom He forbade in combination. Of these, each one alone was presumptively permitted. Then He said: "Lawful to you are women other than those just mentioned," meaning in those cases in which she is otherwise lawful. Do you not see that His saying "Lawful to you are women other than those just mentioned" has the sense of "to the extent He has otherwise made them lawful"? It does not mean that a woman is lawful without a valid marriage, or that it is permissible to marry a fifth wife after the fourth, or that it is possible to combine two sisters in marriage, or anything else that He has forbidden.

I mentioned to him the obligation that God imposed to perform 281
ablutions, and the Prophet's wiping of his footwear, and the fact that most scholars had taken the view to accept such wiping. "Does such wiping contradict anything in the Qur'an?" he asked. Under no circumstances does an account of a Prophetic practice contradict the Qur'an, I replied. "Then," he continued, "can you explain the reason behind this?" I said: When He said, «When you rise to pray, wash your faces and your hands up to the elbows, and wipe your heads and wash your feet up to the ankles,»²⁴³ Prophetic Practice indicated that no one who is in a state of ritual purity, having incurred no minor impurity, and who rises to pray, is subject to that obligation. Similarly, it indicated that the obligation to wash the feet was only incumbent on one performing ablutions who was not wearing footwear that he had put on in a state of complete ritual purity.

I also mentioned to him the Prophet's ruling making the meat of 282
predatory animals with fangs unlawful. God said: «Say, "I do not find in what is revealed to me anything that is unlawful for someone to eat, unless it is carrion or blood spilled out or the flesh of a

pig—for that is an abomination—or something ungodly killed in the name of someone other than God. But whoever is compelled, neither desiring nor transgressing—your Lord is Forgiving and Compassionate”»²⁴⁴ and then He named what He had forbidden. “What does that mean?” he asked. We replied: It means: “Say, ‘I do not find in what is revealed to me anything forbidden among what you used to eat except carrion and so forth. As for what you have abandoned because you did not consider it among the good things, nothing that you used to deem lawful is forbidden for you apart from what God named.’” Prophetic Practice indicated, moreover, that He forbade what you had already made unlawful because of His saying, «He will make the good things lawful for them and make the bad things unlawful for them.»²⁴⁵

283 I also mentioned to him God’s word: «God has made sales lawful, while He has forbidden usury»²⁴⁶ and His saying «Do not consume your property among you in vanity, but let there be trading by mutual consent among you.»²⁴⁷ Then God’s Emissary forbade some sales, including the exchange of dinars for dirhams with delayed delivery, as well as others. The Muslims then declared these unlawful because God’s Emissary did so. Neither this nor other instances contradict the Book of God.

284 “Define for me,” he requested, “the underlying principle in such cases, using a more comprehensive and concise example.” I responded: This is because the Book of God indicates that God put His Emissary in a position to state things on God’s behalf, and God obligated His creatures to follow His Emissary’s commands, and so He said, «God has made sales lawful, while He has forbidden usury.»²⁴⁸ This simply means that God made sales lawful to the extent that it is not prohibited by God in His Book or by means of the words of His Prophet. And similarly, there is His saying «Lawful to you are women other than those just mentioned,»²⁴⁹ which pertains both to those marriages and to those relationships resulting from the ownership of female slaves that God made lawful in His

Book—not that He permitted it in every way. This is how the Arabic language works.

I said to him: If it were permissible to abandon a Prophetic practice—because of the conclusions arrived at by some, out of ignorance of the position of such practices relative to the Book—then one could abandon what we have mentioned above, to wit: wiping the shoes, legalizing everything that could be called a “sale,” combining a woman and her paternal and maternal aunt in marriage, permitting consumption of the meat of predatory animals with fangs, and other things. It would also be permissible to say that the Prophet established the practice that one not amputate in the case of someone whose theft did not amount to more than a quarter dinar and up before the revelation of the relevant passage, but then the verse «The thief, male and female: cut off their hands»²⁵⁰ was revealed to him, so that everyone to whom the term “theft” is applicable would suffer amputation. It would also be permissible to say that the Prophet established the practice that the nonvirgin be stoned, and that his practice remained valid until the verse «The fornicator and the fornicatress, flog each one of them a hundred lashes»²⁵¹ was revealed to him, as a result of which we would flog the virgin and the nonvirgin rather than stoning them. Similarly, one could say that the sales that God’s Emissary made unlawful were merely made so before revelation of a relevant text and that when it was revealed that «God has made sales lawful, while He has forbidden usury»²⁵² they became lawful. Usury, in the narrow sense, was when one man owed another a debt, and when it would fall due the creditor would say, “Do you want to pay now or let it increase?” and he could give him more time and increase the amount owed. Similar examples abound.

Whoever holds such an opinion invalidates the totality of the practices of God’s Emissary, and that opinion is a sign of the ignorance of the one who holds it. “Certainly,” he said. The Practice of God’s Emissary is as I have described. Whoever disagrees with what

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I have said about it has combined ignorance of the Prophetic Practice with error in expressing opinions about something of which he is ignorant.²⁵³

. . .

287 “Mention a practice that was abrogated by another, other than this,” he requested. The abrogating and abrogated practices are discussed in the appropriate place, I said, and it would take too long to repeat them. “A portion of them will do,” he said, “so mention something clear and concise.”

288 Mālik reported to us from ‘Abdallāh ibn Abī Bakr ibn Muḥammad ibn ‘Amr ibn Ḥazm, from ‘Abdallāh ibn Wāqid ibn ‘Abdallāh ibn ‘Umar, who said: “God’s Emissary prohibited eating the meat of sacrificial animals after three days.” ‘Abdallāh ibn Abī Bakr said: “I mentioned that to ‘Amrah, and she said, ‘He is telling the truth. I heard ‘Ā’ishah say, “Some poor Bedouin came from the desert to attend the Festival of the Sacrifice²⁵⁴ during the lifetime of the Prophet, and the Prophet said to people, ‘Keep enough for three days; donate what remains to charity.’ Later, someone said, ‘O Emissary of God, people have been making use of the sacrifices, rending the fat and making water-skins from the hides.’ ‘And what of it?’ said God’s Emissary, or something to that effect. ‘O Emissary of God,’ they replied, ‘you prohibited keeping the meat from sacrifices after three days.’ ‘I only prohibited you from doing that,’ he said, ‘because of the poor Bedouin Arabs who attended the Festival; eat, donate, or store it.’”²⁵⁵

289 Ibn ‘Uyaynah reported to us from al-Zuhrī from Abū ‘Ubayd, client of Ibn Azhar, who said: “I observed the Festival with ‘Alī ibn Abī Ṭālib and heard him say, ‘Let none of you eat the meat of the sacrifice after three days.’”

290 A trustworthy person reported to us from Mā’mar, from al-Zuhrī, from Abū ‘Ubayd, from ‘Alī, who said that God’s Emissary said: “Let none of you eat the meat of the sacrifice after three days.”

Ibn ‘Uyaynah reported to us from Ibrāhīm ibn Maysarah, who 291
said: “I heard Anas ibn Mālik say, ‘We would slaughter our sacrificial
animals and then store the rest as provisions for the trip to Basra.’”

Al-Shāfi‘ī said: These hadith-reports bring together several 292
points. Among them is the fact that the content of ‘Alī’s hadith-
report from the Prophet concerning the Prophet’s prohibition
against keeping the meat of sacrifices after three days and that of
‘Abdallāh ibn Wāqid’s²⁵⁶ hadith-report both agree as received from
the Prophet, and they indicate that ‘Alī heard the prohibition from
the Prophet, and that the prohibition also reached ‘Abdallāh ibn
Wāqid. They also show that the later dispensation from the Prophet
reached neither ‘Alī nor ‘Abdallāh ibn Wāqid. If the dispensa-
tion had reached them, then they would not have transmitted the
hadith-report containing the prohibition once the prohibition had
been abrogated, and also not omitted the dispensation when it had
abrogated the earlier ruling. But the prohibition was abrogated, and
the person who hears it cannot dispense with knowledge of what
abrogated it. And when Anas ibn Mālik said, “We used to take the
meat from sacrifices down to Basra,” it is possible that Anas heard
the dispensation but did not hear the prohibition beforehand. So
he provisioned himself, on the basis of the dispensation, not having
heard the prohibition. Or, he heard both the dispensation and the
prohibition, but the prohibition was abrogated, so he did not men-
tion it. Each of the two who disagreed acted according to what he
knew. So, whoever hears something from God’s Emissary, or who-
ever accepts something from him as confirmed, must adhere to
what he heard until he comes to know something different.

Al-Shāfi‘ī said: When ‘Ā’ishah transmitted the Prophet’s prohibi- 293
tion against keeping the meat of sacrifices beyond three days, and
then transmitted a dispensation subsequent to the prohibition, in
which God’s Emissary reported that he only prohibited keeping
the meat of sacrifices after three days for the sake of poor Bedouin
Arabs arriving in Mecca after traveling in the desert, at that point

the entire hadith-report—as preserved in its entirety, its beginning, and its end, as well as the reason for making things unlawful and lawful in it—constituted ‘Ā’ishah’s hadith-report from the Prophet, and it is incumbent on those who become apprised of it to adopt it.

294 This hadith-report of ‘Ā’ishah is among the clearest accounts of Prophetic Practice that involve abrogation. This indicates that some hadith-reports require a special approach, because one part may be preserved and another part not. The beginning may be preserved but not the end, or the end may be preserved but not the beginning, but each transmitter conveys what he memorized. The later dispensation for keeping, eating, or donating the meat of sacrificial offerings is for only one of two underlying reasons, because of the two different situations. If some poor Bedouin Arabs arrive in Mecca from the desert, then the prohibition against people’s keeping the meat after three days is confirmed. If there is no such group, however, then the dispensation for eating, provisioning, storing, or donating is affirmed. It is also possible that the prohibition against keeping the meat of the sacrificial offerings after three days is abrogated in all circumstances, so that someone may keep as much of the sacrifice as he likes and donate as much to charity as he likes.



ANOTHER INSTANCE OF ABROGATION

295 Muḥammad ibn Ismā’īl ibn Abī Fudayk reported to us from Ibn Abī Dhi’b, from al-Maqburī, from ‘Abd al-Raḥmān ibn Abī Sa’īd, from Abū Sa’īd al-Khudrī: “We were prevented from praying at the Battle of the Trench until after the sunset prayer, well into the night, when the fighting was finally averted from us, and that is referred to in God’s word «God averted fighting from the believers. God is Strong

and Mighty.»²⁵⁷ God's Emissary called for Bilāl and ordered him to make the call to prayer, and he held the noon prayer, which he led, and it was fine, just as if it had been done at its appointed time. Then he did so for the afternoon prayer and prayed it in the same way, then the sunset prayer in the same way, and then the evening prayer in the same way, too. That was before God revealed the passage about the prayer of danger: «either on foot or mounted.»²⁵⁸

Al-Shāfi'ī said: Because Abū Sa'īd related that the Prophet's prayer in the year of the Battle of the Trench occurred before the verse "either on foot or mounted" was revealed regarding the prayer of danger, we infer that the Prophet only prayed the prayer of danger afterward, since Abū Sa'īd was present for it and related how all of the prayers were postponed until after their set times, and he related that that occurred before the revelation of the verse concerning the prayer of danger. In a settled area, the prayer of danger should never be postponed until after its appointed time, and neither should the time for combined prayers during travel,²⁵⁹ not because of danger or for any other reason. Rather, one should pray just as God's Emissary prayed. 296

What we have adopted in regard to the prayer of danger is what Mālik reported to us from Yazīd ibn Rūmān, from Ṣāliḥ ibn Khawwāt, from someone who prayed the prayer of danger together with God's Emissary at the Battle of Dhāt al-Riqā'. One group lined up with him while another group faced the enemy. He led those with him in prayer for one bowing, then he stood in place while they completed the prayer themselves. Then they left and lined up facing the enemy, and the other group came and he led them in prayer for the one bowing that remained of his own prayer, and then he sat in place while they completed the prayer themselves. Then he led them in saying the peace. 297

Someone reported this account to us, or something very similar to it, who heard 'Abdallāh ibn 'Umar ibn Ḥafṣ report from his brother 'Ubaydallāh ibn 'Umar, from al-Qāsim ibn Muḥammad, from Ṣāliḥ ibn Khawwāt ibn Jubayr, from his father, from the Prophet. 298

It is also narrated that the Prophet performed the prayer of danger differently from what Mālik related, but we adopted the above account, and not something else, because it most closely resembles the Qur'an and is a stronger means of confounding the enemy. We have written this out together with the disagreement concerning it and a clarification of the authority for it in the "Chapter on Prayer,"²⁶⁰ and we omitted the hadith-reports mentioned by those who disagree with us concerning this and other things because that about which they disagree with us in this regard is set forth in its various subsections.



ANOTHER INSTANCE

300 God (blessed and exalted) said: «Those of your women who commit indecency—call four of you as witnesses against them. If the four give their testimony, confine the women in their houses until death takes them or God appoints a way for them. If two of you commit it, punish them both; and if they repent and make amends, turn from them.»²⁶¹ The penal sanction for those who engaged in unlawful sexual intercourse was, according to this verse, imprisonment and punishment, until God revealed to His Emissary the penal sanction for unlawful sexual intercourse and said, «The fornicator and the fornicatress, scourge each one of them a hundred lashes.»²⁶²

301 He also said, concerning female slaves: «If they commit indecency once they are properly safeguarded, they shall incur half of the punishment for other safeguarded women.»²⁶³ Thus He abrogated imprisonment for those who commit unlawful sexual intercourse and confirmed penal sanctions for them. What He said concerning female slaves, to wit, «They shall incur half of the punishment for other safeguarded women,» indicated that God

distinguished between the penal sanction applicable to slaves and to free persons for unlawful sexual intercourse. Further, it indicated that “half” could refer only to lashes, since lashing is enumerated, and that it could not refer to stoning because stoning is the taking of a life, which is not numerically divisible, since the life could be taken by casting just one stone, or by one thousand or even more. What cannot be enumerated cannot have a “half,” and there is no “half” in regard to a life such that one could impose stoning for half a life.

God’s saying in *Sūrat al-Nūr* «The fornicator and the fornicatress, scourge each one of them a hundred lashes»²⁶⁴ could apply to all those free persons who commit unlawful sexual intercourse, or to some and not others. We therefore drew an inference from the Practice of God’s Emissary (may my father and mother be his ransom) about who was meant by the hundred lashes. 302

‘Abd al-Wahhāb reported to us from Yūnus ibn ‘Ubayd, from al-Ḥasan, from ‘Ubādah ibn al-Ṣāmit, that God’s Emissary said: “Take this from me! Take this from me! God has appointed ‘a way for them.’ The virgin with a virgin: one hundred lashes and one year’s exile. The nonvirgin with a nonvirgin: one hundred lashes and stoning.” 303

When God’s Emissary said “God has appointed ‘a way for them,’” that indicated that it referred to the first penal sanction to which those who committed unlawful sexual intercourse were subject, because God said “until death takes them or God appoints a way for them.” Then God’s Emissary had Mā’iz stoned and did not lash him, and also the wife of the Aslamī man and did not lash her either. Thus, the Practice of God’s Emissary indicated that lashing was abrogated for nonvirgins who committed unlawful sexual intercourse. For free persons there is no difference in regard to unlawful sexual intercourse except by reason of being safeguarded through marriage, or not being safeguarded thereby. What the Prophet said—“God has appointed ‘a way for them.’ The virgin with a virgin: one hundred lashes and one year’s exile”—indicates that the first 304

thing to be abrogated in respect of those who commit unlawful sexual intercourse was imprisonment, that they were subjected to penal sanction after the prior ruling of imprisonment, and that any penal sanction imposed on those who commit unlawful sexual intercourse could only have come into effect after that initial ruling, since that was the first penal sanction that was imposed.

305 Mālik reported to us from Ibn Shihāb, from ‘Ubaydallāh ibn ‘Abdallāh, from Abū Hurayrah and Zayd ibn Khālid, that they told him: Two men brought a dispute to God’s Emissary. One of them said: “O Emissary of God, will you adjudicate between us on the basis of the Book of God?” “By all means, O Emissary of God,” said the other one, who was more knowledgeable about religion, “adjudicate between us using the Book of God, and permit me to speak.” “Speak,” he replied. “My son,” he began, “is a laborer who works for this man. He fornicated with his wife. I was informed that my son was subject to the penalty of stoning, so I ransomed him with one hundred sheep and a slave girl of mine. Then I asked the scholars and they informed me that my son was to be given one hundred lashes and one year’s exile, and that only the man’s wife was to be stoned.” “By Him in Whose hand is my soul,” said the Emissary of God, “I will most definitely adjudicate between you using the Book of God. As for your livestock and your slave girl, they revert to you.” He then gave the man’s son one hundred lashes and exiled him for one year. Then, he ordered Unays al-Aslamī to go to the wife of the other man and, if she confessed, to stone her. In fact, she did confess, so he had her stoned.

306 Mālik reported to us from Nāfi‘, from Ibn ‘Umar: The Prophet stoned two Jews who committed unlawful sexual intercourse.

307 So the hundred lashes and exile were confirmed for the two virgins who commit unlawful sexual intercourse, and stoning, for the two nonvirgins. If the two nonvirgins were among those originally intended to receive lashes on the basis of the Qur’anic verse, then lashing was abrogated with respect to them, along with stoning. If they were not among those so intended, and only the two virgins

were intended, then they are treated completely differently from two nonvirgins. God provided that the two nonvirgins be stoned, after abrogation of the lashing verse, based on what God's Emissary narrated from God. That is the most likely of its meanings and the most preferable in our view, though God knows best.



ANOTHER INSTANCE

Mālik reported to us from Ibn Shihāb, from Anas ibn Mālik: “The Prophet was riding a horse, and it threw him and gave him an abrasion on his right side. He led one of the prayers while sitting down, and we prayed behind him while sitting down. As he was leaving, he said, ‘The imam is there simply to be followed. If he prays standing, you should pray standing; if he bows down, you should bow down; and if he raises his head, you should raise yours. If he says, “God hears those who praise Him,” you should say, “Our Lord, praise is yours.”’ And when he prays sitting, you should all pray sitting.” 308

Mālik reported to us from Hishām ibn ‘Urwah, from his father, from ‘Ā’ishah, who said: “God’s Emissary led prayers in his house while ill. He prayed in a sitting position and people prayed behind him, standing. He indicated that they should sit, and as he was leaving he said, ‘The imam is there simply to be followed. If he bows down, you should bow down; and if he raises his head, you should raise yours; and if he prays sitting, you should pray sitting.’” This is like the hadith-report of Anas, even though Anas’s hadith-report is more clearly explicated than this one. 309

Mālik reported to us from Hishām ibn ‘Urwah, from his father: God’s Emissary emerged during his final illness and approached Abū Bakr while the latter was standing, leading the people in prayer. Abū Bakr held back, but God’s Emissary indicated that he should 310

continue. Then God's Emissary sat down next to Abū Bakr. Abū Bakr was led in his prayers by God's Emissary, and the people were led in theirs by Abū Bakr.

311 Ibrāhīm al-Nakhaī mentioned a hadith-report that was like 'Urwah's in its import from al-Aswad ibn Yazīd, from 'Ā'ishah, from God's Emissary: in it the Prophet led prayers while in a sitting position and Abū Bakr was led in his prayers by the Prophet, while standing behind him.

312 Yaḥyā ibn Ḥassān informed us of a hadith-report like Mālik's from Ḥammād ibn Salamah, from Hishām ibn 'Urwah, from his father, from 'Ā'ishah: he clarified in it that the Prophet led the prayer from a sitting position with Abū Bakr standing behind him and the people standing behind Abū Bakr.

313 Since the Prophet led prayers while sitting during the illness from which he died, and the people behind him were standing, we infer—even though he commanded people to sit after he fell off his horse, before the illness from which he died, and then, during the illness from which he died, he led prayers sitting, while the people behind him stood—that this abrogated the rule that people sit behind the imam. This indicates what Prophetic Practice conveyed and also that on which people reached consensus: one should pray standing if one is able, and sitting if one is not able. Whoever is able to stand on his own while praying may not pray while sitting. The Prophet's practice—his praying while sitting during his illness, while those behind him stood, even though this abrogated the original practice prior to it—accords with his practice regarding anyone who is in good health or ill, and with the people's consensus that each of them should fulfill his obligation to pray as he is able. So, for example, the sick person should pray behind a healthy imam, sitting while the imam stands. Similarly, we hold that when the imam prays sitting and those who are healthy pray behind him standing, each has fulfilled his obligation to pray; but if the imam delegates someone else to lead the prayer in such a case, that would be best.

A certain person²⁶⁵ has promulgated a baseless idea and claimed that absolutely no one after the Prophet may sit while serving as imam, and he adduced a hadith-report with an interrupted transmission from a man whose transmission is undesirable and whose citations to authority are unreliable: “After me, absolutely no one shall sit while serving as imam.” 314

There are many instances of abrogation similar to this in the Book of God and in accounts of Prophetic Practice, and the examples here will serve to explain other instances of similar import, God willing. Also, there are instances similar to this in the Book of God, some of which we have presented in this book of ours; the rest are found in various passages of the book *Rulings of the Qur’an and Prophetic Practice (Kitāb Ahkām al-Qur’an wa-l-Sunnah)*.²⁶⁶ 315

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“Mention some apparently contradictory hadith-reports,” he said, “that contain no indication of abrogation and in which binding authority exists in the reports that you adopt and not in those that you reject.” I responded: I mentioned previously that God’s Emisary led the prayer of danger at the Battle of Dhāt al-Riqā‘. He lined up with one group, while another group, not praying, remained facing the enemy. He led those with him in prayer for one bowing, then he stood in place while they completed the prayer themselves and then left and stood to face the enemy. The other group came, and he led them in prayer for the one bowing that remained, and then he sat in place while they completed the prayer themselves. Then he led them in saying the peace. 316

Ibn ‘Umar narrated from the Prophet that he led the prayer of danger differently from this prayer in some respects. He said: He led one group in prayer for one bowing while another group stood between him and the enemy. Then the group that was behind him left and went to stand between him and the enemy, while the other group which had yet to pray with him came forward. He led them in prayer for the one bowing that remained for him of his prayer, said 317

the peace, then that group left and everyone together completed the part of the prayer that remained.²⁶⁷

318 Abū ‘Ayyāsh al-Zuraqī narrated that the Prophet led prayers at the Battle of ‘Usfān. Khālid ibn al-Walīd was positioned between him and the prayer-direction, so he lined up together with those who were with him. He bowed down, and they bowed down together; then he prostrated himself, and the group that was with him prostrated themselves, while the other group guarded him. When he arose from his prostration, those who had been guarding him prostrated themselves. Then they arose to complete the prayer with him. Jābir said something similar to this in import. Also, something the validity of which cannot be confirmed was narrated that differs completely from this in all respects.

319 Someone asked me: “How did you come to adopt the prayer of the Prophet at Dhāt al-Riqā’ and not a different version?” As for the hadith-reports of Abū ‘Ayyāsh and Jābir concerning the prayer of danger, I replied, thus do I hold, especially if the reason for praying in that particular manner is similar. “What reason is that?” he asked. God’s Emissary was with fourteen hundred men, I replied, and Khālid ibn al-Walīd had two hundred and was far away in an expanse of desert, unable to attack him because of the small number of those with him and the large number of those with God’s Emissary. Thus, it is most likely that he felt safe from being attacked, and if those in front of him had been attacked, he would have seen it coming. Also, he was on his guard during the prostration and nothing escaped his gaze. So if the situation involves a small enemy force that is far away, and there is nothing there to conceal that force, as I have explained, then I would order the prayer of danger to be done in that way.

320 “I understand,” he admitted, “that the narration about the prayer at the Battle of Dhāt al-Riqā’ does not contradict this because of the difference between the two situations, but why did you go against the hadith-report of Ibn ‘Umar?” Khawwāt ibn Jubayr narrated it from the Prophet, I answered, and Sahl ibn Abī Ḥathmah said

something of nearly the same import. Reports have been preserved in which ‘Alī ibn Abī Tālib led the prayer of danger at the Battle of Harīr in same way that the Prophet did according to what Khawwāt ibn Jubayr narrated, and Khawwāt has precedence in his Companionship and age. “Is there some stronger authority for adopting that besides his precedence in Companionship?” Yes, I replied, what I have discussed above about its resemblance to the Book of God. “Where does it accord with the Book of God?” he asked.

I replied: God said: «When you are among them and lead them in prayer, let one group of them stand with you, and let them take their weapons. Once those praying have prostrated themselves, let them fall to the rear, and let the other group who have not prayed come and pray with you; and let them take their guard and their weapons. Those who do not believe would long for you to neglect your arms and your baggage and for themselves to turn on you in one move. It is no sin for you to lay aside your weapons if rain impedes you or you are sick. But be on your guard»²⁶⁸ and «If you feel secure, perform prayer. Prayer is a prescription at fixed times for the believers.»²⁶⁹ These verses mean, though God knows best, that you should perform the prayer just as you would pray when there is no danger.

Because God distinguished between prayers performed in times of danger and those performed in the absence of any danger—as a precaution for the people of His religion, lest their enemies’ raids harm them—we considered the implications of the hadith-report of Khawwāt ibn Jubayr, and that which contradicted it, and we found that of Khawwāt ibn Jubayr more appropriate than those others in regard to watchful resolve and the mutual symmetrical relationship between the two groups during prayer. This is because the group that prays with the imam first is guarded by the group not praying. The group that guards, when not engaged in prayer, is freed from the obligation to pray, and is thus able to stand, sit, move from side to side, and counterattack if attacked, to warn the others if they fear a sudden attack from the enemy or engage in combat if the

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opportunity presents itself, maintaining their position between the enemy and those praying. The imam should conclude the prayers expeditiously for those praying with him if he fears an enemy attack because of something said by the group on guard. The duties of the two groups were, moreover, equal. In the hadith-report of Khawwât, each of the two groups stood guard over the other. The group that stood guard was exempted from prayer, and then the first group provided for the group that guarded it just what it got from that other group by guarding it while not engaged in prayer. This was a fair division of duties between the two groups.

323 The hadith-report that contradicted that of Khawwât ibn Jubayr is not conducive to being watchful. The first group is guarded during one bowing, and then that guarded group leaves before completing the prayer and itself stands guard. Then the second group prays, guarded by the other group, and then both groups complete the remaining part of the prayer together with no one guarding them. This is because only the imam has completed the prayer, and he, by himself, is not enough. So that is neither watchful nor a robust strategy against the enemy. God reported that He distinguished between the prayer of danger and other prayers out of consideration for the people of His religion, so that no enemy raid would catch them unawares. But in this case, the first group does not get from the second group the like of what it provided for them. In my view, God mentioned the prayer of the imam and the two groups together, but He did not mention that the imam or either of the two groups needed to complete the prayer at a later time. That indicates that the situation of the imam and those behind him is the same: they are excused from performing the full prayer and need not complete the remaining part later. This is the import of the hadith-report of Khawwât and the contrary hadith-report that disagrees with it.

324 Al-Shāfi‘ī said: He asked, “Is there any aspect to the hadith-report you passed over apart from what you have described?” Yes, I answered, it could mean that because the prayer of danger may be

performed in a way contrary to the way one prays when there is no danger, they are permitted to pray in whatever way they are able to, and in accordance with their circumstances and those of the enemy. If they complete the required number of bowings their prayers may differ, and yet the prayers of all of them will be ritually and legally valid.



ANOTHER INSTANCE OF LEGAL DISAGREEMENT

Al-Shāfi‘ī said: Someone said to me: “There is a legal disagreement 325
over the wording of the prayer-formula.²⁷⁰ Ibn Mas‘ūd narrated
from the Prophet that he used to teach people the prayer-formula,
just the way he would teach them suras from the Qur’an. He would
say, ‘It begins with three words: “Salutations to God.”’ Which ver-
sion of the prayer-formula have you adopted?”

I said: Mālik reported to us from Ibn Shihāb, from ‘Urwah, 326
from ‘Abd al-Raḥmān ibn ‘Abd al-Qārī, that he heard ‘Umar ibn
al-Khaṭṭāb say while on the pulpit, teaching people the prayer-for-
mula: “Say ‘Salutations, pious works, good words, and prayers, all
to God. Peace be upon you O Prophet, and God’s mercy and bless-
ings. Peace be upon us and upon God’s pious servants. I testify that
there is no god but God, and I testify that Muḥammad is His servant
and His Emissary.’”

Al-Shāfi‘ī said: That is what those jurists who preceded us in reli- 327
gious knowledge taught us when we were young. Then we learned
it with the chain of transmitters, but we also learned something that
differed from it, and we know of no more authentic chain of trans-
mitters for the prayer-formula than that—whether differing from

it or conforming to it—even though others might be confirmed as equally authentic. The conclusion we reached is that ‘Umar would not have taught it to people, while on the pulpit, before the Companions of God’s Emissary, unless it accorded with what the Prophet had taught them. But when a hadith-report from one of our colleagues reached us that confirmed this in a form that came from the Prophet, we adopted that and found it preferable. “What is it?” he asked.

328 I replied: A trustworthy person—namely, Yaḥyā ibn Ḥassān—reported to us from al-Layth ibn Sa’d, from Abū Zubayr al-Makkī, from Sa’īd ibn Jubayr and Ṭāwūs, from Ibn ‘Abbās, who said: “God’s Emissary used to teach us the prayer-formula, just as he taught us the Qur’an. He would say, ‘Salutations, blessings, prayers, and good words, all to God. Peace be upon you O Prophet; and God’s mercy and His blessings and peace upon us and upon God’s pious servants. I testify that there is no god but God and that Muḥammad is His Emissary.’”

329 Al-Shāfi‘ī said: “How can you not see,” he asked, “that the narrations from the Prophet about this differ? Ibn Mas’ūd narrated something different from that, Abū Mūsā narrated something different from that, and Jābir narrated something different from that. All of them differed from each other in some aspect of their wording, and then ‘Umar taught something that differs from all of those in some of its wording, and so, too, the prayer-formula of ‘Ā’ishah and that of Ibn ‘Umar. Whatever they contain differs in wording from that of their counterparts, and some have longer versions than others.”

330 The matter is clear, I said. “Explain it to me, then,” he demanded. They are all speech that seeks the exaltation of God, I responded. God’s Emissary taught it to them. Perhaps he taught it to someone who memorized it, and to another who memorized it. In regard to things learned by memory, what must be guarded against the most is distortion of the meaning, so that there be no additions or deletions and no inconsistencies in the formulation that distort the meaning; such distortion is not allowed. So perhaps the Prophet

permitted each one of them to say it as he memorized it, since there was nothing in its meaning that could have distorted the legal ruling associated with it. Perhaps those whose narrations and versions of the prayer-formula differed were simply allowed to do that, and they said it according to what they had memorized, what had been available to them, and what was permitted for them.

“Can you cite something,” he asked, “that indicates the permissibility of what you have just described?” Of course, I replied. “What is it?” 331

I said: Mālik reported to us from Ibn Shihāb, from ‘Urwah, from ‘Abd al-Raḥmān ibn ‘Abd al-Qārī, who said: I heard ‘Umar ibn al-Khaṭṭāb say: “I heard Hishām ibn Ḥakīm ibn Ḥizām recite Sūrat al-Furqān²⁷¹ in a way that differed from how I recited it, and the Prophet had taught me to recite it. I nearly sprinted over to him, but then I let him finish and, as he was leaving, I grabbed him by his collar and brought him to the Prophet and said, ‘O Emissary of God, I heard this one recite Sūrat al-Furqān differently from what you taught me to recite.’ So God’s Emissary said to him, ‘Recite!’ and he recited it in the way I had heard him. ‘Thus,’ said God’s Emissary, ‘was it revealed.’ Then he said, ‘Recite!’ to me and I recited. ‘Thus,’ he said, ‘was it revealed. This Qur’an was revealed in seven versions, so recite of it what you are able.’”²⁷² 332

If God, out of mercy and compassion for His creatures, revealed His Book in seven versions—knowing that memorization is subject to slippage—making it lawful for them to recite it with different wordings as long as their differences do not distort the meaning, then it is even more appropriate that differences in the wording of texts other than the Book of God be permitted as long as the meaning is not distorted in any text that does not convey a legal ruling. Differences in wording do not distort the meaning in such cases. One of the Successors said: “I met some of the Companions of God’s Emissary, and they were united in regard to the meaning but disagreed over the wording of a certain text. I asked one of them about that, and he said, ‘It is not a problem as long as the meaning is not distorted.’” 333

334 Al-Shāfi‘ī said: “The prayer-formula,” he said, “is nothing more than the exaltation of God. I hope that anything that accomplishes that would be allowed, and that the disagreement concerning it stems only from what you have mentioned. Something similar, as you have said, may be possible for the prayer of danger. If one accomplishes the entire prayer, in accordance with any of the versions narrated from the Prophet, it should be ritually and legally effective for one, since God differentiated it from other prayers. But how did you come to choose the hadith-report of Ibn ‘Abbās from the Prophet concerning the prayer-formula over others?” Because, I said, I viewed it as broad and heard it in a complete form as transmitted by Ibn ‘Abbās, and thought it more inclusive and more completely worded than the others. So I adopted it, but without denigrating those who adopt other transmissions that are confirmed as coming from God’s Emissary.



INCONSISTENCY IN NARRATION IN A WAY THAT DIFFERS FROM WHAT PRECEDED

335 Mālik reported to us from Nāfi‘, from Abū Sa‘īd al-Khudrī, that God’s Emissary said: “Do not sell gold for gold except in like amounts, and do not make the amounts unequal; and do not sell silver for silver except in like amounts, and do not make the amounts unequal. Do not make an exchange of any amount of either in which one side delays delivery.”

336 Mālik reported to us from Mūsā ibn Abī Tamīm, from Sa‘īd ibn Yasār, from Abū Hurayrah, that God’s Emissary said: “Exchange a dinar for a dinar, and a dirham for a dirham, without one exceeding the other.”

Mālik reported to us from Ḥumayd ibn Qays, from Mujāhid, from Ibn ‘Umar, who said: “Exchange a dinar for a dinar, and a dirham for a dirham, without one exceeding the other. That is our Prophet’s injunction to us and our injunction to you.” 337

Al-Shāfi‘ī said: ‘Uthmān ibn ‘Affān and ‘Ubādah ibn al-Ṣāmit narrated from God’s Emissary that he prohibited excess in present exchanges of gold for gold. Al-Shāfi‘ī said: We adopt these hadith-reports, and the most prominent Companions of God’s Emissary held opinions of similar import, as have most experts in law in the various regions. 338

Sufyān reported to us that he heard ‘Ubaydallāh ibn Abī Yazīd say: I heard Ibn ‘Abbās say: Usāmah ibn Zayd reported that the Prophet said: “Usury only occurs when there is a delay in payment.” Ibn ‘Abbās and a small group of his Meccan associates and others adopted that. 339

Someone said to me: “That hadith-report contradicts those before it.” It may contradict them, I replied, or it may agree with them. “In what regard could it agree with them?” I said: Usāmah might have heard God’s Emissary asked about the exchange of two different things, like gold for silver, or dates for wheat, or whatever differs in kind such that there is some excess in a present exchange, whereupon he said, “Usury is only in delayed payment.” Or perhaps the question preceded this, and he only arrived to hear the answer, then narrated the answer without memorizing the question. Or perhaps he had doubts about it since there is nothing in his hadith-report to negate what is in Usāmah’s hadith-report. So it may agree with them for these reasons. 340

“Why,” he asked, “did you say that it might disagree with them?” Because it was Ibn ‘Abbās who narrated it, I said, and he had a different approach to this issue, holding that there was no usury in a sale and present exchange, and that usury only occurred when there was a delay in payment. 341

“What authority is there, then,” he asked “if the preceding hadith-reports contradict it, for rejecting it in favor of something else?” 342

I said: None of those who narrated any reports contrary to Usāmah, even though less well known than Usāmah for memorizing hadith-reports, falls short of Usāmah in memorization. ‘Uthmān ibn ‘Affān and ‘Ubādah ibn al-Ṣāmit take precedence over Usāmah in age and Companionship, and Abū Hurayrah is the oldest and had the best memory among transmitters of hadith-reports in his time. Because a hadith-report from two persons is on the face of it more worthy of being memorized, and not as susceptible to error as a hadith-report from one, then a hadith-report from more people is more worthy of being termed “memorized” than a hadith-report from someone younger, and a hadith-report from five persons is more worthy of being adopted than such a narrative from only one.



ANOTHER INSTANCE CONSIDERED CONTRADICTORY, BUT NOT BY US

- 343 Ibn ‘Uyaynah reported to us from Muḥammad ibn al-‘Ajlān, from ‘Āṣim ibn ‘Umar ibn Qatādah, from Maḥmūd ibn Labīd, from Rāfi‘ ibn Khadij, that God’s Emissary said: “Perform the dawn prayer at daybreak; that brings a greater reward,” or “that is greater for your rewards.”
- 344 Sufyān reported to us from al-Zuhri, from ‘Urwah, from ‘Ā’ishah, who said: “The women among the believers used to pray the dawn prayer with the Prophet and then leave while still wrapped up in their shawls; no one could recognize them in the early morning darkness.”
- 345 Sahl ibn Sa’d, Zayd ibn Thābit, and others among the Companions of God’s Emissary mentioned that the Prophet went out in the dark for the dawn prayer—this is similar to the point conveyed by ‘Ā’ishah’s report. Al-Shāfi‘ī said: Someone said to me: “We think

that we should go out early for the dawn prayer, based on the hadith-report of Rāfi' ibn Khadij, and we maintain that there is merit in that. You, however, think that since the two hadith-reports are inconsistent, it is permissible for us to adopt only one of them, but we consider that to contradict the hadith-report of 'Ā'ishah.”

So I said to him: If it contradicts the hadith-report of 'Ā'ishah, then you and we both are bound to adopt the hadith-report of 'Ā'ishah over the other one, because the principle that you and we both rely on is this: if hadith-reports are contradictory, we do not adopt one over the other without some reason that indicates that the one that we have adopted is stronger than the one that we have rejected. “What is that reason?” he asked. I said: One of the two hadith-reports must be more like the Book of God; if it resembles God's Book, then it furnishes binding authority. “We say that, too,” he said. If no explicit passage from the Book of God relates to it, I continued, then it is best if we adopt the better confirmed of the two. That occurs when those who narrate it are better known for their chains of transmitters and more renowned for religious knowledge and for having preserved such knowledge, or when the hadith-report we adopt is narrated via two or more channels of transmission and the one we reject via one only. The widely transmitted report is more worthy of being preserved than the lesser of the two. Or, it might be that the one we adopt better agrees with the underlying rationale of some passage in the Book of God, or with other practices of God's Emissary. Or, it might better accord with what is known by scholars, be more valid according to analogy, or be the view held by the majority of the Companions of God's Emissary. “That,” he said, “is what we hold and what scholars hold generally, too.”

I continued: The hadith-report of 'Ā'ishah agrees better with the Book of God because God said «Be watchful over your prayers and over the middle prayer.»²⁷³ When prayer-time arrives, then the most watchful of those who pray is the one who prays earliest. In addition, that report is better known in terms of the trustworthiness and memory of its individual transmitters. Also, there are three

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including ‘Ā’ishah, all of whom narrate something of similar import to her hadith-report from the Prophet: Zayd ibn Thābit and Sahl ibn Sa’d. Finally, ‘Ā’ishah’s hadith-narrative more closely resembles the Prophet’s practices than the hadith-report of Rāfi‘ ibn Khadij. “Which practices?” he asked.

348 I said: God’s Emissary said: “The beginning of the prayer-time pleases God; the end of the prayer-time is God’s pardon.” Of course, the Prophet never preferred anything over what was pleasing to God. “Pardon” can have only two meanings: pardon for a fault or making an allowance. Making an allowance for someone implies that he could gain more merit by doing something else, since he was not commanded to abandon that other action in favor of the act which he has been permitted to do as an allowance. “What do you mean by that?” he asked. I replied: Since we have not been commanded to abandon the beginning of prayer-time, and it is possible for us to pray then, and even earlier, then merit lies in performing it earlier, and performing it later is a fault for which an allowance is made.

349 God’s Emissary clearly stated the like of what we hold. He was asked, “Which act is most meritorious?” “The prayer at the beginning of its time,” he replied. He neither omitted the site of merit nor commanded people to do anything but that, and this is something of which no scholar is ignorant: that praying earlier, at the beginning of the prayer-time, is more deserving of merit because of the concerns, forgetfulness, and weaknesses that beset human beings. That also more closely resembles what is in the Book of God.

350 “Where is that in the Book of God?” he asked. I said: God said: «Be watchful over your prayers and over the middle prayer.»²⁷⁴ Whoever prays at the beginning of the prayer-time is more watchful over it than someone who prays later. We see that people are commanded, concerning both what is mandatory for them and what they do voluntarily, to perform such acts promptly if that is possible, because of the concerns, forgetfulness, and weaknesses that beset human beings, of which no one of sound mind is unaware. The preferability of performing the dawn prayer at the beginning

of its time is confirmed in reports from Abū Bakr, ‘Umar, ‘Uthmān, ‘Alī ibn Abī Ṭālib, Ibn Ma’sūd, Abū Mūsā l-Ash‘arī, Anas ibn Mālik, and others.

“Abū Bakr, ‘Umar, and ‘Uthmān began to pray in the predawn darkness,” he said, “and finished at daybreak only because they recited the Qur’an for a longer time.” I said to him: Sometimes they lengthened their recitation of the Qur’an, and sometimes they shortened it. The relevant time is the beginning of the prayer, not its end. They all began in the predawn darkness and God’s Emissary ended it in the predawn darkness. Your opinion is contrary to confirmed reports from God’s Emissary, and contrary to those Companions. The one who begins prayer at daybreak may end it at daybreak and shorten the recitation, I continued. You went against them in regard to the prayer’s beginning and in regard to the practice of lengthening the Qur’an recitation that you adduced as authority. In the hadith-reports from some of them it is stated that the Prophet finished praying while still in the predawn darkness. 351

“So do you consider the hadith-report of Rāfi‘ to contradict the report from ‘Ā’ishah?” he asked. No, I said. “So in what regard does it agree with it?” he pressed. I said: When God’s Emissary urged people to perform the prayer early and reported that there was merit in doing so, some of those who wished to perform it early may have planned to do so before the so-called second dawn. He said, “Perform the dawn prayer at daybreak,” meaning just at the break of the second dawn. “Could it have another meaning?” he asked. Yes, I said, it could mean what you said or something between what you said and what we said. Each of these meanings can be denoted by the phrase “doing something at daybreak.” “Then what makes the meaning you have adopted better than ours?” he asked. The speculative interpretation that I have presented, I replied. Also, the Prophet said: “There are two dawns. The one that is like the false dawn’s tail²⁷⁵ makes nothing lawful and nothing unlawful. The second dawn, which breaks the dark, makes prayer lawful and food unlawful.” He meant for those intending to fast. 352



ANOTHER INSTANCE CONSIDERED A CASE OF LEGAL DISAGREEMENT

- 353 Sufyān reported to us from al-Zuhrī, from ‘Aṭā’ ibn Yazīd al-Laythī, from Abū Ayyūb al-Anṣārī, that the Prophet said: “Do not face the prayer-direction and do not turn your backs to it when defecating or urinating. Rather, face east or west.” Abū Ayyūb added, “We proceeded to Syria and found latrines already made, so we turned sideways and asked God’s forgiveness.”
- 354 Mālik reported to us from Yaḥyā ibn Sa‘īd, from Muḥammad ibn Yaḥyā ibn Ḥabbān, from his uncle Wāsi‘ ibn Ḥabbān, from ‘Abdallāh ibn ‘Umar, that he used to say: “Some people say: ‘When you sit to relieve yourselves, do not face the prayer-direction or Jerusalem.’ I went up on top of one of our houses,” recounted ‘Abdallāh, “and saw God’s Emissary on two mud bricks, facing Jerusalem while relieving himself.”
- 355 Al-Shāfi‘ī said: God’s Emissary taught manners to those who were around him, and they were Bedouin Arabs with no facilities in their dwellings for washing, or at least not most of them. Thus, his teaching manners to them in this case could support two different interpretations. One is that because they would simply go out into the desert to relieve themselves, he commanded them not to face the prayer-direction and not to turn their backs to it, because of the vastness of the desert and the small effort needed for them to comply—because they were free to turn in any direction, without constraint, in order to avoid facing or turning their backs to the prayer-direction when relieving themselves, whether defecating or urinating. They had no latrines that could constrain them to face toward or away from the prayer-direction, so the Prophet made it a sweeping requirement meant to guard against them doing so. It

would often happen that those who went out to relieve themselves would not cover up their private parts from someone praying, who could see their private parts from the front or from behind, if he faced the prayer-direction. Thus, they were commanded to honor God's prayer-direction and to cover their private parts from anyone praying who might be able to see them. That is most likely the intended meaning, though God knows best. But it is also possible that he prohibited them, when defecating or urinating, from facing something that had been made to indicate the prayer-direction in the desert so that no one would defecate or urinate at the actual marker of the prayer-direction and leave some filth there, or leave such filth behind it, and thus leave something that could disturb those praying.

Abū Ayyūb heard what was related from the Prophet in a general way and construed it as pertaining both to going out into the desert and to relieving oneself in a settled area. He did not draw any distinction relating to going among dwellings, where people had put latrines that in some cases faced toward and in other cases faced away from the prayer-direction, and in which the one going to relieve himself in them would be concealed from view. Thus, he adhered to the hadith-report in a general way, just as he had heard it in a general way. Similarly, whoever hears a hadith-report must adhere to it in accordance with its unrestricted and general import until he finds some indication that he can use to make a distinction concerning it in subsidiary cases. 356

Al-Shāfi'ī said: When Ibn 'Umar related that he saw the Prophet facing Jerusalem while relieving himself, it being one of the two prayer-directions—and if he faced it, he turned his back to the Kaaba—he disagreed with those who held that one not face the prayer-direction or turn one's back to it. He took the view that one need not desist from something that God's Emissary himself did. It seems that he did not hear what God's Emissary commanded be done in the desert, that he might distinguish between the desert and settled areas and thus hold the prohibition to be operative in 357

the desert while recognizing the existence of a dispensation for settled areas. Otherwise, he would have held a different view—based on what he heard and saw—and drawn a distinction, using the indication that God’s Emissary had made because of the difference between the situation in the desert and in settlements. This shows clearly that everyone who heard something from God’s Emissary accepted it and adhered to it, and if he did not know when to distinguish among related situations, then he did not make any distinction as long as he did not know to do so, except on the basis of some indication from God’s Emissary regarding the differences among such situations. There are many instances similar to this among hadith-reports; we will make do with what we have mentioned here in lieu of what we have left unmentioned.



ANOTHER INSTANCE OF LEGAL DISAGREEMENT

- 358 Ibn ‘Uyaynah reported to us from al-Zuhri, from ‘Ubaydallāh ibn ‘Abdallāh ibn ‘Utbah, from Ibn ‘Abbās, who said al-Ṣā‘b ibn Jaththāmah reported to me that he heard the Prophet being asked about pagan families who are attacked at night in their homes, and whose women and children become casualties. God’s Emissary said: “They are pagans, too.” ‘Amr ibn Dinār added, as transmitted by al-Zuhri: “They belong to the same family.”
- 359 Ibn ‘Uyaynah reported to us from al-Zuhri, from Ibn Ka‘b, from Mālik, from his uncle, that when the Prophet sent people to Ibn Abī al-Ḥuqayq, he ordered that women and children not be killed.
- 360 Sufyān came to the conclusion that the Prophet’s saying “They are pagans, too” made it permissible to kill them, but that

the hadith-report about Ibn Abī l-Ḥuqayq abrogated it. He said, “Whenever al-Zuhrī transmitted the hadith-report of al-Ṣa‘b ibn Jaththāmah, he followed it with the hadith-report of Ibn Ka‘b.”

Al-Shāfi‘ī said: The hadith-report of al-Ṣa‘b ibn Jaththāmah stems from the Prophet’s Minor Pilgrimage. If it is from his first Minor Pilgrimage, then one would say: The matter of Ibn Abī l-Ḥuqayq occurred before that or, it is said, in the same year. If it was in his second Minor Pilgrimage, then it occurred after the matter of Ibn Abī l-Ḥuqayq, no doubt, but God knows best.²⁷⁶ 361

We did not know that he (may God bless him) gave a dispensation for the killing of women and children and then prohibited that they be killed. The meaning of his prohibition against killing women and children in our view, though God knows best, is that one may not intentionally seek to kill them when it is possible to distinguish them from those whom he did order to be killed. The point of his saying “They are pagans, too” is that the women and children and the combatants share two traits: they have neither the legal protection of faith, which would otherwise prevent the shedding of their blood, nor the legal protection of being in an area inhabited primarily by believers, which would prevent an invasion of that area. 362

Since God’s Emissary permitted nighttime and surprise attacks against dwellings, and attacked the al-Muṣṭalaq tribe by surprise—and one knows with certainty that nighttime and surprise attacks against dwellings are lawful because God’s Emissary made them lawful—then no one who attacks or invades the home is prohibited from striking down women and children; and sin, expiation, blood-price, and retaliation do not apply for those who strike them down. This is because one is permitted to attack dwellings at night and by surprise; the occupants do not enjoy the protection afforded by adherence to Islam. However, no one has the right to kill them intentionally when they are clearly identifiable and recognizable as such. The Prophet prohibited the killing of children because they have not reached the age when they can be held responsible for 363

practicing unbelief, and women because they are insignificant in battle. And, moreover, they and the children may be enslaved and thus become a source of strength for God's religion.

364 If someone were to say, "Clarify that with something else," one would reply: That is sufficient for the scholar and nothing else is needed. If he were to ask then, "Do you find anything else with which you can support it and to which you can compare it from God's Book?" I would say: Yes.

365 God said: «A believer should not kill a believer, unless it happens by mistake. Whoever kills a believer by mistake, must free a believing slave and pay the blood-price to the victim's family, unless they remit it as alms. If the victim is from a people who are hostile to you but is nevertheless a believer, the recompense is the freeing of a believing slave. If he comes from a people with whom you have a covenant, the blood-price is to be handed over to his family and a believing slave must be freed. Whoever does not find the means for that must fast for two consecutive months, a penance from God.

366 God is Knowing and Wise.»²⁷⁷

For the mistaken killing of a believer, God mandated the blood-price and the freeing of a slave; and for the killing of someone protected by a covenant, He also mandated the blood-price and the freeing of a slave. This applies because they are both persons whose blood is forbidden to be shed, by reason of faith, a compact, and domicile together. Even if a believer is domiciled somewhere not forbidden to invaders, he himself is nonetheless forbidden to be killed by reason of his faith, so in that case expiation becomes due for the taking of his life but no blood-price should be paid. It is still forbidden to take his life because of his faith. Since it is not forbidden to kill the pagans' women and children, neither by reason of faith nor domicile, then killing them entails no blood-price, retaliation, compensation, or sin, God willing, and no expiation.



CONCERNING THE MAJOR WASHING FOR FRIDAY PRAYER

He said, “Mention some other hadith-reports that people considered to be contradictory.” 367

I said: Mālik reported to us from Ṣafwān ibn Sulaym, from ‘Aṭā ibn Yaṣār, from Abū Sa‘īd al-Khudrī, that God’s Emissary said: “The major washing for Friday prayer is mandatory for every pubescent and postpubescent male.” 368

Ibn ‘Uyaynah reported to us from al-Zuhrī, from Sālim, from his father, that the Prophet said: “Whoever among you attends Friday prayer, let him perform the major washing.” 369

Al-Shāfi‘ī said: The saying of God’s Emissary that “the major washing for Friday prayer is mandatory” and his command could mean two different things. The apparent meaning is that it is mandatory and that the only degree of ritual purity that is ritually and legally sufficient for the Friday prayer is the major washing, just as the only degree of ritual cleansing that is ritually and legally sufficient to correct major impurity is the major washing. “Mandatory” could, however, also pertain to what is optionally deemed mandatory, whatever ennobles one’s character, and whatever encourages personal hygiene. 370

Mālik reported to us from al-Zuhrī, from Sālim, who said: “One of the Prophet’s Companions came into the mosque on Friday while ‘Umar ibn al-Khaṭṭāb was giving the sermon. ‘Do you know what time it is?’ asked ‘Umar. ‘O commander of the faithful, I was returning from the market and heard the call, so I only had time to perform ablutions,’ he replied. ‘Ablutions, too!’ said ‘Umar, ‘when you know full well that God’s Emissary used to command the major washing!’” 371

372 A trustworthy person transmitted to me a hadith-report of similar import to that of Mālik, from Ma‘mar, from al-Zuhrī, from Sālim, from his father, who identified the one who attended the Friday prayer without having done the major washing as ‘Uthmān ibn ‘Affān.

373 ‘Umar recalled that God’s Emissary used to command performance of the major washing on Fridays, and knew as well that ‘Uthmān was fully aware of God’s Emissary’s command to perform it, and ‘Umar reminded ‘Uthmān of the Prophet’s command to perform it and also reminded ‘Uthmān that ‘Uthmān was perfectly aware of that. So if anyone were mistaken enough to imagine that ‘Uthmān had forgotten, and that ‘Umar reminded him, before the prayer, that he had forgotten, the fact that ‘Uthmān did not omit to pray because of his failure to perform the major washing and ‘Umar did not order him to leave to perform it indicate that they both knew that the command of God’s Emissary was optional. It did not mean that nothing else would be ritually and legally sufficient, because ‘Umar would not have relented in his command to perform the major washing, nor would ‘Uthmān have failed to perform it, since we know that he was mindful of having omitted to perform it, and also of the Prophet’s command to perform it. Thus, it must be the case that the major washing is, as we have explained, optional.

374 The Basrans narrated that the Prophet said: “Whoever performs ablutions on Friday, that suffices and he has done well, but whoever performs the major washing, that is better.”

375 Sufyān reported to us from Yaḥyā, from ‘Amrah, from ‘Ā’ishah, who said: “Self-employed laborers²⁷⁸ would come to prayer as they were, and it was said to them, ‘If only you had performed the major washing.’”



PROHIBITION FOR A REASON INDICATED BY A REASON GIVEN IN ANOTHER HADITH-REPORT

Mālik reported to us from Abū l-Zinād and Muḥammad ibn Yaḥyā 376
ibn Ḥabbān, from al-A'raj, from Abū Hurayrah, that God's Emis-
sary said: "Let none of you make a marriage proposal that interferes
with the marriage proposal of his counterpart."²⁷⁹

Mālik reported to us from Nāfi', from Ibn 'Umar, from the 377
Prophet, that he said: "Let none of you make a marriage proposal
that interferes with the marriage proposal of his counterpart."

Al-Shāfi'ī said: If there had not been any indication from God's 378
Emissary that his prohibition against making a marriage proposal
that interferes with the marriage proposal of a counterpart was for
one reason and not another, the most apparent meaning would
have been that it was unlawful for someone to make a marriage
proposal that interfered with someone else's from the time the first
proposal was first made until it was abandoned. It might be that
the Prophet's saying "Let none of you make a marriage proposal
that interferes with the marriage proposal of his counterpart" was
intended as the answer to a question that would determine the had-
ith-report's meaning, but that the one who transmitted it did not
hear the underlying reason for the question in response to which
God's Emissary said this. Thus, the two transmitters may have con-
veyed some of the report but not all of it. Alternatively, they may
have had doubts about part of it and were silent about what they
doubted. Thus, the Prophet may have been asked about a man who
proposed to a woman who accepted his proposal and gave permis-
sion to be married to him. Then, someone more desirable than he
proposed, and she withdrew from the first, to whom she had con-
sented to let herself be married. Therefore, he prohibited proposing

to a woman in that situation. She, after all, might withdraw from the one to whom she consented to be married, and then the other one would not marry her, and that would spoil things for her and her fiancé to whom she had first consented to be married.

379 If someone were to ask, “How did you come to hold the opinion that the Prophet’s prohibition against making a marriage proposal that interferes with the marriage proposal of one’s counterpart was for one reason and not another?” Based on an indication from the Prophet himself, I replied. If he asks, “Where is that?” one should reply to him, God willing:

380 Mālik reported to us from ‘Abdallāh ibn Yazīd, client of al-Aswad ibn Sufyān, from Abū Salamah ibn ‘Abd al-Raḥmān, from Fāṭimah bint Qays: Her husband divorced her, and God’s Emissary commanded her to fulfill the waiting period in the home of Ibn Umm Maktūm. “When you become lawful to marry,’ he said, ‘then permit me to make a match.’ So when I had become lawful, I mentioned to him that Mu‘āwiyah ibn Abī Sufyān and Abū Jahm had both proposed to me. ‘As for Abū Jahm,’ said God’s Emissary, ‘he never lifts his staff from his fillies,²⁸⁰ and as for Mu‘āwiyah, he’s a vagabond with no money. Marry Usāmah ibn Zayd.’” “I expressed my dislike for him,” she continued. “‘Marry Usāmah,’ he repeated. So I did marry him, and God made it turn out well and I felt blessed to have him.”

381 Al-Shāfi‘ī said: Our opinion is in line with that report. In regard to God’s Emissary’s arranging to betroth Usāmah to Fāṭimah after she informed God’s Emissary that Mu‘āwiyah and Abū Jahm had already proposed to her, the Practice of God’s Emissary indicates two things. One of them is that the Prophet knew that they could not both have proposed to her without one of them having proposed after the other. Since he did not prohibit her from consenting to either of their proposals, however, and did not say to her that, “it was not for either of them to propose to you until the other abandoned his proposal to you,” and he arranged for Usāmah ibn Zayd to propose to her after their two proposals, we infer that she did not

accept either one. Had she accepted one of them, he would have commanded her to marry the one whom she had approved. Further, her reporting to him about who had proposed to her must have been to report about proposals to which she had not consented, and was perhaps a request for the Prophet's counsel; and it would not have been appropriate for her to consult with him had she given her consent to one of them. Since the Prophet arranged for Usāmah to propose to her, we infer that the situation in which she received the proposal was other than the situation in which he prohibited proposals to such women. There was no situation in which one could have drawn a distinction between a lawful and an unlawful proposal to her except the one in which she had given her consent to her guardian to marry her off. Then, her prospective husband could, if her guardian had agreed to marry her off, compel her to go through with the marriage, and he would be compelled to go through with it, too, and she would become lawful to him. Before that, however, her situation is the same in either case: her guardian may not marry her off unless she gives permission, and it does not matter whether she inclines to accept a proposal or not.

If someone were to say, "So the mental state in which she inclines to accept a proposal is the opposite of her mental state in which she does not so incline?" Similarly, if she were proposed to, insulted the suitor and disliked him, he proposed again and she did not insult him and did not express any dislike but also did not incline, then in that case, when she ceased to insult him, her mental state would be the opposite of her mental state in which she insulted him, and in that case she would have moved closer to accepting his proposal. Indeed, her mental state can even vary, because prior to when she inclines to a particular suitor that she favors, her mental state will be closer to inclining to him in some situations than in others. But in that case there is still no relevant underlying factor that distinguishes between two such states, though God knows best, except what I have described: he prohibited that one propose to her after she has given her consent to her guardian to marry her off, at which

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point the guardian's authority becomes effective. When the guardian's authority is not yet effective, her two mental states are effectively equivalent, though God knows best.



PROHIBITION FOR A REASON THAT IS CLEARER THAN THAT IN THE PRECEDING DISCUSSION

383 Mālik reported to us from Nāfi', from Ibn 'Umar, that God's Emissary said: "Each of the two parties to the sale has the option to rescind against the other party, as long as they have not separated, except in the case of a sale with a stipulated option."

384 Sufyān reported to us from al-Zuhrī, from Sa'īd ibn al-Musayyab, from Abū Hurayrah, that the Prophet said: "No one should make an offer to sell that interferes with the sale of his counterpart."²⁸¹

385 Al-Shāfi'ī said: This point clarifies that God's Emissary's statement "The two parties to the sale have the option to rescind as long as they have not separated" and his prohibition against making an offer to sell that interferes with the sale of the offeror's counterpart only apply if the other two have concluded a sale but not yet left the place where they concluded the sale. That is, the two of them have not become "parties to a sale" until they actually contract the sale together. If the sale, once contracted, becomes binding on each of them, then it does not injure the seller if another man sells the buyer goods like those of the seller, or other goods, inasmuch as the seller's sale of his own goods has already been completed. When, however, they have the option to rescind, then if a man buys a garment from another man for ten dinars, and someone else comes along and offers him the like of it for nine dinars, most likely the buyer would void the first sale, if he had the option to rescind before separating from the first seller. Perhaps he would void it, and then

the sale between him and the other seller would not be completed. That other seller would have spoiled things for the first seller and the buyer, or for one of them. So that is the point of the prohibition against a man offering to sell in a way that interferes with the sale of his counterpart—there can be no other point. Do you not see that if he sells him a robe for ten dinars and the sale becomes binding on him before they leave their spot and then someone else sells him one better than it for a dinar, that does not hurt the first seller because the sale for ten dinars has become binding and the buyer cannot void it?

It is narrated from the Prophet that he said: “Let none of you overbid his counterpart.” If that report is confirmed, though I do not remember it being so, then it is just like the Prophet’s saying “Let none of you make a marriage proposal that interferes with the marriage proposal of his counterpart.” A second potential buyer should not overbid the first buyer if that first buyer has accepted the sale, and gives permission for it to occur prior to the actual exchange, such that when it occurs, it becomes binding on him. If someone were to ask, “What indicates that?” God’s Emissary sold to people who increased their offers. Sales involving persons who increase their offers are the same as overbidding one’s counterpart. The seller did not accept the first bid and demanded more.²⁸² 386



PROHIBITION FOR A REASON RESEMBLING THE PRECEDING DISCUSSION IN ONE WAY, AND DIFFERING FROM IT IN ANOTHER

Mālik reported to us from Muḥammad ibn Yaḥyā ibn Ḥabbān, from al-Aʿraj, from Abū Hurayrah, that God’s Emissary prohibited prayer between late afternoon and sunset and between dawn and sunrise.²⁸³ 387

388 Mālik reported to us from Nāfi', from Ibn 'Umar, that God's Emissary said: "Let none of you attempt to perform the prayer at the rising or the setting of the sun."

389 Mālik reported to us from Zayd ibn Aslam, from 'Aṭā' ibn Yasār, from 'Abdallāh al-Ṣunābiḥī, that God's Emissary said: "The sun rises with Satan's horn, but if it rises higher they separate. When it reaches its zenith, they are paired again, but when it declines they separate. Then, when it is about to set, they are paired, but when it sets, they separate." God's Emissary prohibited prayer at those times.

390 God's Emissary's prohibition against prayer during those times has two possible interpretations. One, and it is the least restrictive of the two, is that all prayers are forbidden at those times, whether obligatory prayers that must be made up because of forgetfulness or sleeping late, or those that become binding for whatever other reason. No one may perform them at those times. If someone did pray then, it would not fulfill his obligation to pray, just as when someone performs a prayer prior to its appointed time—it does not satisfy his obligation.

391 It could also mean, however, that he intended thereby some prayers and not others. We find that prayers are divided into two kinds. One of the two comprises those that are obligatory and, accordingly, no Muslim may omit to perform them at their appointed time. If he does omit them, then he must make them up. The other kind is that by means of which one draws near to God through an extra devotional act. The person who performs such an extra devotional act may omit to perform it without having to make it up. We hold that the obligatory prayer is distinguishable from voluntary devotional prayer during travel. If a man is riding, then he must perform the prescribed prayer while on the ground. No other manner of praying will satisfy his obligation. He may, however, perform extra devotional prayers while riding, facing in whatever direction he pleases. The two types of prayer are also distinguishable when

performed in a settled area and while traveling. No one who is able to stand may perform the obligatory prayer while seated, but one may do so in the case of extra devotional prayers.

Since there are two possible meanings, it is incumbent on scholars not to interpret it restrictively, instead of unrestrictively, except on the basis of some indication from the Practice of God's Emissary, or the consensus of Muslim scholars, whose agreement is never contrary to one of his practices. There are other hadith-reports like this from God's Emissary. They should be interpreted according to the apparent meaning, unrestrictively, unless there is some indication from him, as I have noted, or consensus of the Muslims, to the effect that they are to be interpreted by seeking the objectively correct meaning rather than be understood in their merely apparent meaning, and read restrictively instead of unrestrictively. In that case they will have interpreted it in accordance with the indications at hand and obeyed it in both senses at once.²⁸⁴ 392

Mālik reported to us from Zayd ibn Aslam, from 'Aṭā' ibn Yasār, Busr ibn Sa'īd, and al-A'raj; they transmitted from Abū Hurayrah that God's Emissary said: "Whoever makes it to one bowing of the dawn prayer before sunrise has arrived in time for the dawn prayer; and whoever makes it to one bowing of the afternoon prayer before sunset has arrived in time for the afternoon prayer." 393

Al-Shāfi'ī said: It is known with certainty that if someone prays one bowing of the dawn prayer before sunrise, and if someone prays one bowing of the afternoon prayer before sunset, then they have both prayed at two times that have being unlawful in common.²⁸⁵ 394 That is because they prayed after the dawn prayer-time and after the afternoon prayer-time, and at the same time as the rising and the setting of the sun, and these are four times during which prayer is prohibited. Because, however, God's Emissary granted that persons who prayed during those times had made it to the dawn and afternoon prayers, we infer that his prohibition against prayer during those times was for extra devotional prayers, not for mandatory

prayers. That is because he would not have considered anyone to have arrived in time for a prayer at a time during which that prayer was prohibited.

395 Mālik reported to us from Ibn Shihāb, from Ibn al-Musayyab, that God’s Emissary said: “Whoever forgets a prayer, let him pray it when he remembers it. God said: «Perform prayer for My remembrance.»”²⁸⁶

396 Anas ibn Mālik and ‘Imrān ibn al-Ḥuṣayn transmitted something similar to the hadith-report of Ibn al-Musayyab, from the Prophet, and one of them added, “or if he sleeps through it.”

397 Al-Shāfi‘ī said: God’s Emissary said: “Let him pray it when he remembers it,” making that the time to do it. He reported this on behalf of God (blessed and exalted) and did not except any time during which one should omit to perform it after remembering it.

398 Ibn ‘Uyaynah reported to us from Abū l-Zubayr, from ‘Abdallāh ibn Bābāh, from Jubayr ibn Muṭ‘im, that the Prophet said: “O clan of ‘Abd Manāf and whoever among you has charge of people’s affairs: let no one ever prevent anyone else from circumambulating this House or praying at whatever time he wishes, day or night.”

399 ‘Abd al-Majīd reported something similar in meaning to us, from Ibn Jurayj, from ‘Aṭā’, from the Prophet, and he added, “O clan of ‘Abd al-Muṭṭalib, O clan of ‘Abd Manāf!” and then quoted the hadith-report.

400 Jubayr reported from the Prophet that he commanded that circumambulation of the Sacred House and prayer be permitted at any time those praying and circumambulating wished. This report clarifies that the Prophet prohibited only prayers that were not obligatory for one reason or another during those times. As for those prayers that are obligatory, not only did he not prohibit them, he permitted them (may God bless him). Muslims generally prayed at funerals after the afternoon and dawn prayers, because such prayers were mandatory. A certain associate of ours relied on an account in which ‘Umar ibn al-Khaṭṭāb circumambulated after the dawn prayer and then looked and, seeing that the sun had not yet risen, rode up

to Dhū Ṭuwā, at which point the sun had risen, so he dismounted and prayed. Based on this report, that associate prohibited the prayer performed in conjunction with circumambulation after the afternoon and dawn prayers, just as he prohibited those prayers that are not binding. If, however, ‘Umar could delay the prayer associated with circumambulation—and he would have delayed it only because he was permitted to, or because he wanted to alight in Dhū Ṭuwā for some reason²⁸⁷—then it was allowed for him to do so, God willing. He heard only the prohibition against prayer in general terms, and he had al-Munkadir beaten on account of it in Medina after the afternoon prayer, not having heard any indication that the Prophet had only forbidden such prayers for the reason that we have explained. Accordingly, it was necessary for ‘Umar to do what he did.²⁸⁸

It is mandatory for whoever comes to know the reason why something was prohibited, or the reason why it was permitted, to understand that the reason for its licitness differs from the reason for its prohibition. This is as I have explained above in regard to what ‘Alī narrated from the Prophet about the prohibition against keeping the meat from sacrifices longer than three days.²⁸⁹ He had, after all, heard the prohibition, but not the reason for the prohibition. 401

If someone were to say: “Abū Sa‘īd al-Khudrī did what ‘Umar did,” we would say: The answer to this is like the answer in other instances. If someone were to ask: “Did anyone do the opposite of what those two did?” one should say: Yes, Ibn ‘Umar, Ibn ‘Abbās, ‘Ā’ishah, al-Ḥasan, al-Ḥusayn, and others; and Ibn ‘Umar heard the prohibition from the Prophet. 402

Ibn ‘Uyaynah reported to us from ‘Amr ibn Dinār, who said: “I myself and ‘Aṭā’ ibn Abī Rabāḥ saw Ibn ‘Umar circumambulate after the dawn prayer and pray before sunrise.” 403

Sufyān, from ‘Ammār al-Duhnī, from Abū Shu‘bah: Al-Ḥasan and al-Ḥusayn circumambulated after the afternoon prayer and prayed. 404

405 Muslim and ‘Abd al-Majīd reported to us from Ibn Jurayj, from
Ibn Abī Mulaikah, who said: “I saw Ibn ‘Abbās circumambulate and
pray after the afternoon prayer.”

406 I have only mentioned the differences of opinion among the
Companions of God’s Emissary in this instance so that he who is
made aware of them can draw an inference therefrom: they will not
disagree about something for which there is an account of a practice
of God’s Emissary unless it is for this reason, or because no account
of the practice in question reached those of them who expressed
an opinion contrary to it, or because such a practice can support
a speculative interpretation, and the like, such that the person
expressing the opinion will have some excuse for holding that view,
God willing.

407 If something is confirmed as coming from God’s Emissary, then
it is binding on everyone who becomes aware of it. Nothing else can
strengthen it or weaken it. Rather, people are obligated to follow
it. God did not give to anyone the right to gainsay the Prophet’s
command.



ANOTHER CHAPTER

408 Mālik reported to us from Nāfi’, from Ibn ‘Umar, that God’s Emis-
sary prohibited the *muzābanah*-sale. The *muzābanah*-sale is the
exchange of fresh dates for dried dates by volume, and the sale of
grapes for raisins by volume.

409 Mālik reported to us from ‘Abdallāh ibn Yazīd, client of al-Aswad
ibn Sufyān, that Zayd Abū ‘Ayyāsh reported to him, from Sa’d ibn
Abī Waqqāṣ, who heard the Prophet asked about buying fresh dates
with dried dates. The Prophet asked: “Do the fresh dates weigh less
when they are dried?” “Yes,” was the reply. So he prohibited that.

Mālik reported to us from Nāfi‘, from Ibn ‘Umar, from Zayd ibn Thābit: God’s Emissary granted a dispensation to the owner of ‘*arāyā* [dates on the tree]²⁹⁰ so that he could sell them by estimating their amount. 410

Ibn ‘Uyaynah reported to us from al-Zuhrī, from Sālim, from his father, from Zayd ibn Thābit: The Prophet granted a dispensation for the ‘*arāyā*-sale, that is, the sale of an estimated quantity of dates on the tree. 411

Al-Shāfi‘ī said: The sale of fresh dates for dried dates was prohibited because of the Prophet’s prohibition, and God’s Emissary clarified that he prohibited it specifically only because the ripe dates became a smaller quantity after being dried. He also prohibited the exchange of dried dates for dried dates, except in like amounts. So when he considered the inevitable diminution of ripe dates if dried, he realized that there could never be an exchange of like for like, since the precise amount of that diminution was unknown and unknowable.²⁹¹ The prohibition thus combined two different points. One involves the unequal exchange of a good sold by volume. The other is the *muzābanah*-sale, a sale of something whose volume is known for something of the same kind but whose volume is unknown, and it is prohibited for two reasons.²⁹² When God’s Emissary granted a dispensation for the ‘*arāyā*-sale, being an estimated amount exchanged for dates by volume, then either it was a dispensation pertaining to something that he had otherwise prohibited, or the prohibition pertained only to the exchange of moist for dried dates specifically, and not to the ‘*arāyā*-sale. In the latter case, it is unrestricted speech the intended scope of which is restricted.²⁹³ 412



AN INSTANCE THAT RESEMBLES THE PRECEDING POINT

- 413 Sa'īd ibn Sālim reported to us from Ibn Jurayj, from 'Aṭā', from Ṣafwān ibn Mawhab, that someone reported to him from 'Abdallāh ibn Muḥammad ibn Ṣayfī, from Ḥakīm ibn Ḥizām, who said: "God's Emissary said to me, 'Am I not informed' or 'Has it not reached me' or whatever expression it was that God willed, 'that you sell food?'"²⁹⁴ "Indeed, O Emissary of God," replied Ḥakīm. "Do not ever sell food," enjoined God's Emissary, "unless you have yourself bought and paid for it in full."
- 414 Sa'īd reported to us from Ibn Jurayj, who said: 'Aṭā' reported that, too, from 'Abdallāh ibn 'Iṣmah, from Ḥakīm ibn Ḥizām, that he heard it from the Prophet.
- 415 A trustworthy person reported to us from Ayyūb ibn Abī Tamīmah, from Yūsuf ibn Māhak, from Ḥakīm ibn Ḥizām, who said: "God's Emissary prohibited me from selling what I did not own." That is, he prohibited the selling of anything that is not physically present with you and for which you have incurred no liability.
- 416 Ibn 'Uyaynah reported to us from Ibn Abī Najīh, from 'Abdallāh ibn Kathīr, from Abū l-Minhāl, from Ibn 'Abbās, who said: God's Emissary came to Medina while they were still selling dried dates for payment made a year or two in advance. Then God's Emissary said: "Whoever pays in advance, let it be for a known volume, a known weight, and a known period of time." Al-Shāfi'ī said: it is "*and* a known period of time" as I have committed it to memory, but others say that it is as I say except that he said "*or for* a known period of time."²⁹⁵
- 417 The Prophet's prohibition against a man's selling what he does not own could refer to selling what is not physically present with

him such that the buyer could see it just as the seller does when they contract its sale. It could also refer to the seller's sale to someone of something that the seller does not actually own—and which therefore can neither be described with particularity, nor made the seller's liability for which he is responsible, nor would it be in his possession such that he could be bound to deliver the precise item in question to the buyer. It could also have meanings other than those two. So when God's Emissary commanded that those who pay in advance do so at a known volume, weight, and period—or, *either* for a known volume and weight *or* for a known period—such a transaction became included among those sales in which the seller did not have with him, or own, the sale goods at the time of the sale. When, however, the seller was made liable for it, based on a description such that he could be held responsible for it at the end of the stipulated period, that indicated that the Prophet merely prohibited the sale of a specific item not owned by the seller, though God knows best. The prohibition could also be against selling any absent item, whether owned by the seller or not, because it might perish or become diminished before the buyer could see it.

Whenever the language in an account of the Practice of God's Emissary is unrestricted in its apparent meaning, it is to be construed in accordance with that apparent, unrestricted sense, until a confirmed hadith-report from God's Emissary (may my father and mother be his ransom) comes to be known and indicates that by the apparently general, unrestricted language the Prophet intended only part of what was referred to generally and not other parts of it, as I have already explained in this case, and in regard to other instances of similar import. Scholars are bound to rule based on both reports according to their various aspects, as long as they can find some way to give them both effect. They are not to consider them as contradictory if it is possible to use both together; that is, if it is possible to put them both into effect together, or some way can be found to do so. One report should not be considered more obligatory than the other. Two such hadith-reports are not to have

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contradiction imputed to them as long as there is some way to use both as the basis for rulings. Contradiction only occurs when one cannot put one text into effect except by eliminating another, as when there are two hadith-reports that pertain to one thing, and one makes it lawful while the other makes it unlawful.



DESCRIPTION OF GOD'S AND HIS EMISSARY'S PROHIBITIONS

419 “Give me,” he requested, “a complete summary of God’s prohibition (He is mighty and sublime), and then of the Prophet’s prohibition, in general terms, and leave nothing out.” I said to him: God’s prohibition encompasses two senses. One is that the thing that He prohibits is unlawful in general, but might be lawful in some limited respect that God indicates in His Book or through the words of His Prophet. If God’s Emissary prohibits something of that kind, then his prohibition makes it forbidden. In that case, it can only be understood as an instance of forbidding something absolutely, unless it is done for a specific reason, as I have just explained.

420 “Explain to me that aspect of the prohibition with which you began your discussion,” he requested, “using an example that indicates what else could be within its scope.” So I said to him: All women are forbidden except for one of two reasons, marriage or concubinage. Those are the two reasons on the basis of which God permitted them. God’s Emissary established practices for concluding marriages, and marriage makes sexual access to women licit, though it is illicit beforehand. His practices showed that there should be a guardian, witnesses, and consent on the part of the non-virgin bride. His practice concerning the bride’s consent indicates

that concluding a marriage also involves the consent of the groom, with no difference between the two.

Thus, if four things are present in marriage—that the nonvirgin bride consent, that the groom consent, that the guardian be the one to marry off the woman, and that it be concluded before witnesses—then the marriage is lawful, except in some instances that I will mention, God willing. If the marriage lacks one of those elements, then it is void because it was not concluded according to the practices of God’s Emissary in the way that makes marriage lawful. If one were to specify a dowry, that would be preferable to me, but it does not invalidate the marriage to omit the dowry, because God confirmed in His Book the validity of a marriage without a dowry. I have written about this elsewhere.²⁹⁶ It is the same whether the woman is noble or lowly: both are in the same situation in regard to what makes marriage lawful, and what makes it unlawful, and in regard to what rights they have and what duties they have concerning what is licit, illicit, and in regard to any penal sanctions to which they might be subject. 421

If a marriage is concluded according to the conditions I have described, then it is valid, except in those situations in which God has forbidden marriage. In those situations, even if a marriage were contracted on the basis of the aforementioned conditions, it would be annulled, by reason of God’s prohibition, whether in His Book or in the words of His Prophet, against such marriages in such situations. It would simply be invalid. Those situations include a man’s marriage to his wife’s sister; God prohibited that two sisters be simultaneously married to one man. Also, a man may not marry a fifth wife; God set the upper limit at four and the Prophet clarified that God’s setting that limit constituted a ban against a man’s being married to more than that simultaneously. Also, he may not marry a woman if he is already married to her paternal or maternal aunt; the Prophet prohibited that. Finally, a man may not marry a woman during her waiting period. None of those marriages is valid. That is 422

because they were prohibited from being contracted, and there is no disagreement about this among scholars.²⁹⁷

423 Similar to these, though God knows best, are the Prophet's prohibition of *shighār*-marriages, his prohibition of *mut'ah*-marriages,²⁹⁸ and his prohibition of pilgrims' marrying or giving others away in marriage while in the ritual state. We annul all such marriages that are prohibited in these situations in the same way that we annul those prohibited arrangements that were mentioned above. Some people may disagree with us about this, and I have written about that elsewhere.²⁹⁹

424 Similar to this is the case where the woman is married without her permission and then subsequently ratifies the marriage; that is not permissible because the marriage was originally contracted in a prohibited manner.

425 Also similar is the prohibition of God's Emissary against sales involving uncertainty, the sale of ripe dates for dried dates—except for the *'arāyā*-sale—and others that he prohibited. This is because a man's property is presumptively inviolate with respect to others, except to the extent that something makes it licit. Sales transactions that make another's property licit are those that were not forbidden by God's Emissary. Those sales transactions that God's Emissary forbade do not make a man's property, which is presumptively inviolate, licit with respect to others. Neither does the sin arising from engaging in a prohibited sales transaction make what is forbidden licit. It can only be made licit by means of something that is not a sin. This is basic knowledge.

426 If someone were to ask, "Can you give an example of the converse of what you have just mentioned, that is, the situation in which something is generally licit, but people are subject to a prohibition in respect of some small part of it?" An example of this, God willing, is God's Emissary's prohibition against a man wrapping himself in a garment in an offensive way, or gathering it around himself in such a way that his genitalia are exposed to public view. Another example is when he ordered a boy to eat what was in front of him,

and prohibited him from eating from the middle of the platter. It is also narrated from him—though not as well attested as what we have just mentioned—that he prohibited one from eating two dates at once, from peeling a date to expose its core, and from sleeping at night in the middle of the road.³⁰⁰

Because the garment is licit for the person wearing it, the food licit for the eater of it such that he could finish it all up if he wished, and the ground licit because it is owned by God and not by any human, and people are equally entitled to it, a person is forbidden from doing one act in regard to those things and commanded to do some other act in regard to them that is other than what he is forbidden to do. 427

The prohibition indicates that the Prophet only prohibited someone from wrapping himself in a single garment and sitting in a way that would expose his genitalia and leave them uncovered. Because doing that exposed his private parts, he was told to cover them up with his garment. The prohibition against exposing his private parts was not a prohibition against his wearing his garment, so that it would be unlawful for him to wear it. Rather, he was commanded to wear it in a way that hid his private parts from view. The Prophet's command that one eat only what was in front of one and not from the middle of the platter was nothing more than instruction in table manners, to wit, that one should eat what is in front of one. After all, it was otherwise permissible for him to eat what was in front of him and from any other part of the food. This is because it is nicer for him when eating with someone else and less likely to make for repulsive or gluttonous eating habits. The Prophet commanded that he not eat from the middle of the platter so that a blessing would descend upon him if he refrained from doing that. The Prophet was concerned to ensure that the one eating receive an eternal blessing that would descend on him always, but he also permitted him to eat from the middle if he first ate from what surrounded it.³⁰¹ 428

Since the Prophet permitted one to pass along the right-of-way—and passing along it is permitted by virtue of the fact that it 429

has no owner who could prevent one from doing so and thereby make it unlawful—he must only have issued the prohibition for a good reason, out of concern for the person whom he prohibited from sleeping there at night. It was because of the Prophet’s concern for him that he said, “It is the refuge of venomous creatures and the pathway of snakes,” not because lying in the right-of-way at night is itself unlawful. He prohibited it because the right-of-way is crowded and highly trafficked; if someone lay down there at that time he would interfere with the right of others to pass.

430 If someone were to say, “What is the difference between that and the first case?” one should reply: Whoever is presented with authoritative proof for this knows that the Prophet prohibited what we have described. Whoever does what he has been prohibited from doing, while aware of the prohibition, commits a sin by virtue of his doing what he was ordered not to do. May he ask God’s forgiveness and not do it again.

431 If someone says, “This one sins and the one you mentioned above sinned, too, in regard to marriage and sales. How do you differentiate between their situations?” I would say: With regard to their sin, I do not differentiate between them, since I have declared them both to be sinners. However, some sins are more grievous than others.

432 He may ask, “How did you not make it unlawful for those just mentioned to wear the garment, or to eat the food, or to walk along the road, given that those persons sinned, and yet you made the others’ marriage and sales unlawful because of their sin?” One should reply: The command to which those latter persons were subject concerned something generally permitted and lawful for them. I deemed lawful for them what was already lawful, and unlawful for them what was already unlawful. What is unlawful for them is other than what is lawful. Their sin concerned something permissible; it did not render those things unlawful in all circumstances. Rather, it was unlawful for them to sin in a particular way in regard to those otherwise generally lawful things.

If someone were to ask, “Is there another example of this?” one should reply: A man has a wife and a female slave. He is prohibited from having sexual intercourse with them when they are menstruating or fasting. If he does, then such sexual intercourse is not lawful for him in that circumstance, even though neither of the two women is unlawful for him in other circumstances, since both are presumptively permitted and lawful. One man’s property is presumptively unlawful for anyone else except to the extent that it is made permissible. Sexual access to women is unlawful except to the extent that it becomes permitted by reason of marriage or concubinage. If a prohibited marriage or sale is contracted for something that is unlawful, it does not become lawful except by means of the things that make it lawful. Nothing that is unlawful can be made lawful by something else that is unlawful, and such things remain presumptively unlawful until they are done in the way which God made them lawful, whether in His Book, by means of the words of His Emissary, through the Muslims’ consensus, or in some way that is covered by the rationale for them.³⁰² I have already given examples before this of prohibitions used to convey something other than outright prohibition, along with the relevant passages that indicate the validity of this distinction. I have thus said enough and do not need to repeat it—and I ask for God’s protection and assistance.



CHAPTER ON KNOWLEDGE

Al-Shāfi‘ī said: Someone asked me: “What is knowledge? What knowledge is incumbent on people?” Knowledge is of two kinds, I replied: knowledge of the general public, which any person who has reached his majority and who is of sound mind may not ignore. “Like what?” he asked. Like the five prayers, I replied, and that God

is owed the fast of Ramadan, the Pilgrimage to the Sacred House if one is able, and alms from their property, and that unlawful sexual intercourse, homicide, theft, and wine are outlawed. God's servants are legally responsible for them, they must understand them, perform them, give them freely of themselves and their property, and refrain from doing what is outlawed. That category of knowledge in its entirety is found in explicit texts in the Book of God and is widely extant among the adherents of Islam. Great masses of them pass it down from the great masses of them who went before, relating it from God's Emissary. They dispute neither the fact that it is passed down in this way nor about the fact that it is obligatory for them. Moreover, it is not possible to be mistaken about the reports that convey such general knowledge or to engage in speculative interpretation in regard to it. Neither are disputes concerning it permissible.

435 "What," he asked, "is the second kind?" It is the subsidiary obligations that apply to God's servants, I replied, and the particular rulings among them, and other things for which there is no explicit scriptural proof-text and, for the most part, no explicit account of a practice, even though some small part of it might be covered by such a practice, which would belong to the category of reports within the competence of specialists, not to that of reports for the general public. This is also the case for whatever is susceptible to speculative interpretation and gleaned by means of analogy. "Does that second kind of knowledge remain mandatory in the way that the first kind of knowledge is? Is the requirement that one know it set aside for people except to the extent that they undertake it as an extra act of devotion, such that whoever omits to take it up is not considered to have sinned through its omission? Or is there some third aspect that you could adduce, based on a report or analogy?"

436 There is indeed a third aspect, I replied. "Describe it for me, then," he said, "and cite the authority for it, what is binding, who is bound, and who is not bound thereby." This is a level of knowledge to which the general public does not have access, I said, nor have

all of those specially concerned with it been charged with it. As for those specially concerned with it who are able to have access to it, it is not possible for all of them, as a whole, to let it lapse.³⁰³ If a sufficient number of such persons takes it up, then those others who omit to do so commit no transgression, God willing, but an advantage accrues in respect of it to those who do take it up as compared with those who let it lapse.

“Can you furnish me with a report,” he asked, “or something of similar purport that could serve as an analogy for it?” I replied: God imposed the obligation of jihad in His Book and by means of His Prophet and then he confirmed the call to jihad when He said «God has bought from the believers their persons and their possessions for the price that Paradise will be theirs. They will fight in God’s way and will kill and be killed: a promise binding on God in the Torah and the Gospel and the Qur’an. Who fulfills His covenant more fully than God? Rejoice in the bargain you have made with Him. That is the great triumph.»³⁰⁴ He also said: «But fight the pagans in all of them, as they fight you in all of them. And know that God is with those who are God-fearing»³⁰⁵ and «Kill the polytheists wherever you find them and take them and confine them and lie in wait for them at every place of ambush. If they repent and perform prayer and pay alms, release them. God is Forgiving and Compassionate»³⁰⁶ and «Fight from among the people who have been given the Book those who do not believe in God and the Last Day and who do not forbid that which God and His Emissary have forbidden and who do not follow the religion of truth, until they pay the tribute readily, having been humbled.»³⁰⁷

‘Abd al-‘Aziz reported to us from Muḥammad ibn ‘Amr from Abū Salamah from Abū Hurayrah, who said: God’s Emissary said: “I will continue to battle people until they say, ‘There is no god but God.’ If they say that, they have safeguarded their lives and their property from me.”

God (sublime His praise) also said: «What is the matter with you? When you are told, “Go out in God’s way,” you sink heavily

to the ground. Are you content with the life of this world rather than the world to come? The enjoyment of the life of this world is a little thing, compared with the world to come. If you do not come out, He will punish you severely and will substitute another people for you. You will not injure Him in anything. God has power over everything»³⁰⁸ and «Go out, light and heavy, and strive with your persons and your possessions in God's way. That is better for you, if you have knowledge.»³⁰⁹

440 The verses could mean that jihad in general, and responding to the call to it in particular, are incumbent on everyone able to engage in it such that no such person is allowed to hold back from it,³¹⁰ just as in the case of prayer, the Pilgrimage, and alms: no one for whom such obligations are mandatory may escape them by having someone else carry them out on his behalf, since the works of an individual in these situations may not be ascribed to another. It is also possible, however, that the obligation to do it in the verses means something other than the obligation to pray, to wit, that He intended for the obligation to be undertaken by a sufficient number of people. Thus, whoever undertakes to wage jihad against those pagans who are the objects of jihad, being part of a sufficient number of such persons, has managed to carry out the obligation, achieve an extra reward, and dispel the sin from those who hold back.

441 God did not make the two of them equal. He said: «Those of the believers who sit still, other than those who are suffering some injury, are not on an equal footing with those who strive in God's way with their possessions and their persons. God gives preference in rank to those who strive with their possessions and their persons, placing them above those who sit still. God has promised each the fairest reward, but He bestows a mighty way on those who strive, in preference to those who sit still.»³¹¹ The apparent meaning of the verses suggests that the obligation is that of the general public.

442 "State clearly for me," he requested, "how it is indicated that if some of the public undertake what only a sufficient number of people must do, then that dispels the sin from those who hold

back.” It is in that last verse, I replied. “Where in it?” he asked. I replied: God said: “God has promised each the fairest reward,” so He promised those who hold back from jihad the fairest reward for faith and clearly stated the reward of those who participate in jihad in comparison to those who sit still. If the latter were sinners by reason of their holding back when others went out on raids, then punishment for the sin—if God had not excused it—would have been more appropriate than a fair reward.

“Can you find something else about this?” he asked. Yes, I replied, 443
in God’s word: «The believers should not go out to fight all in one body. But why should not a party of every group of them go forth, that they may gain understanding in religion and that they may warn their people when they return . . . ?»³¹² God’s Emissary went out on a raid, and made a group of his Companions go out with him; and another group stayed back, so that even ‘Alī ibn Abī Ṭālib held back from the raid against Tabūk. God reported that the Muslims did not all have to heed the call: “But why should not a party of every group of them go forth?” So He let it be known that the call was for some and not others. Acquiring religious knowledge, too, is only incumbent on some and not others, and so, too, for other obligations, except for the most important obligations, ignorance of which is not allowed, though God knows best.

This is so for every obligation, in a given situation, that is 444
intended to be undertaken only by a sufficient number of people. If a sufficient number of Muslims undertakes it, then those who hold back have avoided sin. But if none of them undertakes it, then I fear that none of those able to do it would avoid sin. Indeed, I do not doubt that, because of God’s saying «If you do not come out, He will punish you severely.»³¹³ “What does that mean?” he asked. The indication here, I said, is that their holding back altogether from the call to jihad is not allowed; but if a sufficient number heed the call, their coming out to fight lets those who hold back avoid sin, God willing, since if only some come out, then the term “coming out” still validly applies to them.

445 “Is there another example besides jihad?” he asked. Praying at funerals and burials, I replied. It is not lawful to omit to do these, but neither is it mandatory for everyone in the vicinity to attend them. The person who holds back has the sin dispelled by those people who do undertake it in sufficient number. So, too, returning greetings—God said: «When you are greeted with a greeting, then greet with a fairer greeting or return it. God takes account of everything.»³¹⁴

446 God’s Emissary said: “The standing person should greet the sitting person,” and “If one person in a group offers a greeting, that suffices for them all.” He meant returning a greeting in particular, since returning a greeting even by a few is still within the meaning of “returning it.” The fact that a sufficient number of people do it prevents the duty of returning greetings from remaining unfulfilled.

447 The Muslims have continually followed the practice I have described, ever since God sent His Prophet, as far as I have been informed, up until today. A minority of them acquires religious knowledge, and some of them attend funerals, wage jihad, return the greetings of others, while others hold back from doing these things. They recognize the merit of those who undertake the study of religious knowledge, jihad, attendance at funerals, and returning greetings, but they do not deem sinners those who fall short in doing those things, since a sufficient number of people undertakes them.



CHAPTER ON THE UNCORROBORATED REPORT

448 Someone said to me: “Define for me the least authoritative kind of text that binds scholars, who must then acknowledge that such a report—that lies within the competence of specialists—has become

confirmed for them.” I said: It is the uncorroborated report of an individual from an individual that reaches all the way back to the Prophet, or back to someone just short of him.

The authority of such a report is not, however, established until several things are in place: The person who transmits it must be trustworthy in his religion; known for veracity in his hadith-reports; able to understand what he is transmitting; and knowledgeable about how different wording can result in distortion of the meaning. He must be someone who repeats a hadith-report literally, just as he heard it, and does not paraphrase it, because if he transmits it paraphrastically but does not know what distorts its meaning, then he would not know whether he has made what is lawful unlawful. If, on the other hand, he conveys it literally, then there is no possibility that might cause one to fear that hadith-report’s distortion. He must be a good memorizer if he transmits from memory, and someone who preserves his notes carefully if he transmits from his notes. If he has the same hadith-report as persons who transmit from memory, then his hadith-report must agree with theirs. He must also be innocent of concealing defects in transmission, that is, of transmitting things from people whom he met but from whom he did not actually hear anything, or transmitting things from the Prophet that contradict what trustworthy persons transmit. Also, everyone above him who transmits must be so, all the way up a given hadith-report’s chain of transmitters until it reaches the Prophet or whomever else it reaches short of him. This is because each one of them authenticates it for the subsequent transmitter, and provides authentication of the preceding transmitter. None of them can be without the characteristics that I have just listed.

He said, “Clarify this for me using something that I may understand better than this, something with which I have more experience, because I have less experience with what you have explained about hadith-reports.” Would you like me to tell you about something to which this is analogous? “Yes.” This is a source of law in and of itself, I said, and not to be analogized to anything else, since

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analogical reasoning is weaker than an actual source of law. “Do not use an analogy, then,” he continued, “but give me an example of something from the rules concerning testimony, knowledge of which is widespread.” It differs from testimony in some respects but has things in common with it in others, I replied. “How does it differ?” he asked.

451 I said: I accept lone individuals and women as transmitters of hadith-reports, but I do not accept either by themselves as witnesses. I also accept that someone say, “So-and-so transmitted to me from so-and-so,” if the person is not one who conceals defects in transmission of hadith-reports, but in regard to testimony I only accept “I heard,” or “I saw,” or “I was made to swear to something.” But hadith-reports also differ among themselves, so I adopt some based on an inference from a scriptural proof-text, a Prophetic practice, an instance of consensus, or an analogy, but those ways of confirming information are not used for testimony at all. Then, there are people all of whose testimony is acceptable and yet from whom I would not accept hadith-reports. This is because of how susceptible hadith-reports are to frequent distortion and omission of words that affect their meanings. They also share some things with testimony, however, apart from what I have just noted.

452 He said, “As for what you said about not accepting hadith-reports except from good memorizers who are trustworthy and knowledgeable about what distorts their meaning, it is as you say. Why do you not say the same about testimony?” That is because the distortion of a hadith-report’s meaning is more subtle than the distortion of the meaning in testimony, and I must take more precautions against it in the case of hadith-reports than I do in the case of testimony. “That, too, is as you say,” he replied, “but I disagree with your refusal to rely completely on the trustworthy transmitter in cases where he transmits from a trustworthy person who transmits from a man whose trustworthiness you do not know. You should have a good opinion of him, not reject him, and assume that he only

narrates from another trustworthy person, even if you do not know that person yourself.”

What about the case of four persons, I asked, all credible witnesses and jurists. They testify that two other witnesses testify to the truth of one man’s claim against another. Would you rule in favor of this claim if the four did not also testify in favor of the credibility of the two other witnesses?³¹⁵ “No,” he replied, “and neither would I base any definitive ruling on the testimony of the two until I could know their credibility, either through certification of their credibility by the four witnesses, or certification of it from someone else, or based on my personal knowledge of their credibility.” 453

Why did you not accept the two, I pressed, on the basis of the same reason that you urged me to use as a basis for accepting someone’s hadith-reports? You might have said, “They would not testify unless it was about someone who, in their view, was himself a credible witness.” “They might testify about someone whom they think has sufficient credibility,” he said, “or about someone whom they know but of whose credibility they are uncertain. Since that is possible in their testimony, it is not for me to accept the testimony of anyone about whom they testify unless they also testify to that person’s credibility, or I have personal knowledge of it, and also of the credibility of the one who testifies before me to the credibility of others. I cannot accept the testimony of one witness to the credibility of another without knowing myself the credibility of the first witness.” 454

The argument that works in your favor in this case works against you otherwise, I replied. You should decline to accept reports from a veracious person transmitted from someone else whose veracity is unknown. People are more stringent in taking care to testify about the testimony of someone whose credibility they know than they are in only accepting hadith-reports from someone whose hadith-reports they know to be probative. For example, a man meets another man who seems fine to him, and so the first one thinks well 455

of him and accepts his hadith-reports and him, all the while not knowing his true state. So the first one mentions that “a man called So-and-so transmitted such-and-such to me,” either because he hopes to find some knowledge about that hadith-report with a trustworthy person and thus be able to accept it; or in order to transmit it further despite the fact that he disagrees with it or is astonished by it; or because he is ignorant about the hadith-reports transmitted by that person. I do not think I have ever met anyone who did not transmit both from trustworthy persons with good memories and also from persons of the opposite description. In this regard, I have done what was necessary. Seeking out whatever might bear on the veracity of those who transmit directly to me is no more mandatory than seeking out whatever might bear on the veracity of those above them in the chain of transmitters. This is because I need to know about all of them what I need to know about those whom I have actually met. Each of them authenticates that the report came from the one above him in the chain of transmitters and does so for the one below him, as well.

456 “Why,” he asked, “do you accept hadith-reports from someone whom you do not know to conceal defects in transmission and who says ‘I have this from . . .’ when he might not actually have heard it from that person?” I replied to him: Muslims who are credible witnesses have that credibility and probity for themselves. Their situation as it affects themselves is other than their situation as it pertains to others. Is it not the case that if I know them to be credible in themselves, I can accept their testimony, but if they testify about someone else’s testimony³¹⁶ I cannot accept that other testimony until I know the situation of that other person? My knowledge of their credibility is not the same as my knowledge of the credibility of those about whose testimony they testify. When they say “I have this from . . .,” it is a report about themselves, and their mention of names is considered probative unless something they do leads us to infer something to the contrary. In such a case, then, we would be on our guard in that area in which their actions differed from

what was incumbent on them. In regard to concealing defects in the transmission of a hadith-report, we know of only one instance in our country among those who went before and those of our associates whom we met before they died. Some of them accepted such a report from someone in regard to whom, had they left it with him, it would have been better for them.

When someone says, “I heard So-and-so say, ‘I heard So-and-so,’” 457 and when he says “So-and-so transmitted to me from So-and-so,” that means the same for them.³¹⁷ They only ever transmit what they have actually heard from the transmitters they have met when they identify them in this manner, and consequently we accept “So-and-so transmitted to me from So-and-so.”

Anyone we come to know as having once concealed defects 458 in transmission has revealed his weak spot to us in his narrations. Neither is that weak spot a lie, such that we reject all of his hadith-reports because of it, nor is it sincere advice given truly, such that we accept from him what we accept from those who truly give sincere advice. We do not accept a hadith-report from anyone who falsifies transmission unless he says “he transmitted to me” or “I heard.”

“I see,” he said, “that you sometimes accept the testimony of 459 those whose hadith-reports are not accepted.” This, I replied, is because of the great importance and status of hadith-reports for the Muslims, and also for a clearly evident reason. “Which is?” he asked. I replied: If a particular expression is left out of a hadith-report, that omission could distort the meaning, or someone could utter it but use a different expression than the transmitter, and the one who so uttered it would have distorted the meaning without intending to. So whoever transmits that hadith-report and is ignorant of that point does not understand the hadith-report in question. We would not accept his hadith-reports if he transmitted what he did not understand, or if he were one of those who do not convey such narratives literally, or if he instead sought to promulgate them paraphrastically, without comprehending their meaning.

460 “Can someone be a credible witness but not have his hadith-reports accepted?” he asked. Yes, I answered, if they are as I have described, then that is a clear point of suspicion on the basis of which we would reject their hadith-reports. A man could be a credible witness with respect to others but suspect in regard to himself or one of his relatives. Maybe he is even someone who would rather leap from a great height than give false testimony, but once there is suspicion about him, his testimony is rejected because of it. Such suspicions are more obvious in the case of someone who does not convey hadith-reports literally and understand their meanings than in the case of a witness who testifies on behalf of a second witness when that second witness is someone whose testimony should be rejected because of a suspicion about him in a particular situation.

461 One must evaluate the testimony of witnesses according to certain considerations. If we infer that they are partial in a way we are able to discern, or that they have an interest that goes beyond the purpose of their testimony on someone’s behalf, we do not accept their testimony. Also, if they testify about something very complex, of a kind that would elude their understanding, we do not accept their testimony, because they do not understand what they are testifying about.

462 We do not accept hadith-reports from those hadith-transmitters who err frequently and have no accurate notes on which to rely, just as we do not accept the testimony of those who make frequent errors when giving evidence.

463 Specialists in hadith-reports are of different kinds. Some among them are well known for their knowledge of hadith-reports, for seeking it out as a matter of piety, learning it from fathers, uncles, relatives, and friends, and for spending much time in sessions with those who debate about it. Such persons are to be given preference in respect of their ability to memorize. If such a person is contradicted by someone who falls short of him, it is better to accept the hadith-reports of the former than those of the one who, being among those who fall short of him, contradicts him.

One must also evaluate specialists in hadith-reports according to certain considerations. If they share in transmitting hadith-reports from one man, then one can draw an inference about the strength of their memory according to whether their report agrees with what others have memorized from that person, or one draws an inference against the strength of their memory if they go against what others have memorized from him. In the case of inconsistent narrations, one draws an inference regarding what has been correctly memorized and what is an error by this means. Other things, too, indicate veracity, sound memory, and error, and we have explained this elsewhere. I ask God for assistance. 464

“Can you cite some authority in support of accepting the uncorroborated report,” he inquired, “when you do not accept the uncorroborated testimony of an individual? And what authority can you cite for analogizing it to testimony in most respects, but distinguishing between the two in some others?” You are repeating what I assumed you had already finished, I replied. I did not analogize it to testimony; it is just that you asked me to give you an example using something that you already knew and concerning which you had more expertise than you do in regard to hadith-reports. I provided an example to you on that basis; I did not need to make an analogy. What confirms the uncorroborated report is strong enough that I do not need to give examples of it by using something else—indeed, it is a source of law in and of itself. 465

“How can it be,” he asked, “that hadith-reports are like testimony in one respect and then differ from some of its underlying characteristics in others?” It differs from testimony, I explained, just as I have described for you, in some respects. If I have likened it to testimony in certain respects and not others, then the argument in my favor concerning it is clear, God willing. “How so,” he asked, “when testimony only works in one way?” Do you mean in regard to some things and not others, I asked, or in all respects? “In all respects,” he replied. What is the least number of witnesses that you accept, I asked, in cases of unlawful sexual intercourse? “Four.” 466

If you are missing one, do you impose flogging on the others?³¹⁸ “Yes,” he replied. How many do you accept in cases of homicide, unbelief, and highway robbery, I asked, all offenses for which you impose capital punishment? “Two witnesses,” he said. And how many do you accept in cases involving property? “One male witness or two female witnesses.” And how many do you accept for determining whether a bride has physical defects? “One female witness.” If you do not have two witnesses, or one male witness and two female witnesses, you would not flog them as you would the witnesses in a case of unlawful sexual intercourse, would you? “Correct,” he replied. Do you think that these cases are all the same? I asked. “Yes,” he answered, “in that I accept testimony from different numbers of witnesses, and only impose flogging on witnesses in cases of fornication.”

467 If I were to say this to you in regard to the uncorroborated report—which has in common with testimony the fact that I accept it, but differs from it in regard to numbers—would not your argument about testimony be just like the argument against you concerning the uncorroborated report? I pressed.³¹⁹ “I only hold that there is a difference between the number of witnesses,” he said, “based on reports and inferences.”

468 I, too, hold that one should accept the uncorroborated report, I said, based on reports and inferences. Consider women’s testimony about birth, I continued. Why do you permit it and yet disallow it in a case involving one dirham? “Based on precedent,” he replied. And if someone said to you that nothing less than one male witness and two female witnesses is mentioned in the Qur’an? “It is not proscribed that one permit less than that, so we permitted what the Muslims permitted, and that is not contrary to the Qur’an,” he replied. Thus, we replied, do we hold in regard to confirmation of the uncorroborated report, based on an inference from other things, all of which are stronger than what supports permitting women’s testimony.

“Can you cite some authority besides precedent,” he asked, “that distinguishes between reports and testimony?” Yes, I said, something about which no scholar that I know disagrees. “What is that?” A credible witness, I answered, is permitted to testify in some matters, but his testimony is rejected in others. “In what areas,” he asked, “is his testimony rejected?” Whenever he testifies about something that brings him an advantage of any kind, I said, or avoids a debt, or brings an advantage to his son or father, or averts something from them, and other areas of suspicion besides these. In regard to such testimony, the witness only either testifies against someone to make a debt or a penal sanction binding on him, or in favor of someone so that a debt is recovered for him or someone punished for a wrong done to him. He is exempt from the debts that become binding on others, not implicated in that person’s debt, penal sanction, or other shame that attaches to them. He might even bring some advantage to someone toward whom he is even more strongly biased than in the case of his son or father, and yet his testimony would be accepted in such a case since there would be no appearance of impropriety stemming from bias toward himself, his son, or his father, or other instances of suspected bias.³²⁰

The one who transmits hadith-reports about the lawful and the unlawful, on the other hand, does not bring himself or anyone else any pecuniary advantage or avoid any disadvantage of that kind for himself or others, nor does he cause penal sanctions to be incurred by them or by someone else for their sakes. He and whoever else among the Muslims transmits that hadith-report—whether it be about something that is lawful or unlawful—have it in common with the general public. Their situations do not differ in regard to it such that he is suspected of bias at one time and has his reports rejected, and not suspected of it at another and has his reports accepted. This is unlike the situation of the witness, which can vary, in both the case of the general public and that of the elites. There are circumstances in which people’s reports are more credible and

more likely to be accompanied by fear of God than in others, or in which their intentions are more credible, their thinking more constant, and their heedlessness less. These are when death approaches because of illness, or while on a dangerous journey, or merely when reminded of death, and also in other circumstances that caution them against heedlessness.

471 I said to him: Some Muslims who are not veracious might nonetheless be so in such circumstances. Having been entrusted with a report, they might come to believe that others rely on that report and so become exceedingly truthful. Even if it is not out of piety, it might be out of embarrassment at having been put in a position of trust for a report that they would not use to avert something from themselves or to gain some advantage, but then they might lie afterward, or cease to use caution in transmitting it truthfully. So since there are circumstances in which the general public and dishonest people are truthful in a way that eases the concerns of hadith-transmitters, it is even more likely that people who are God-fearing and veracious in all their circumstances would take great care to transmit their hadith-reports correctly under the circumstances that would most strongly require such care, because they have been put in a position of trust and held up as signposts of the religion. They know of the veracity to which God has bound them in every matter and that hadith-reports concerning what is lawful and unlawful are the loftiest of matters and the most remote from anything involving suspicion of bias. The hadith-reports that are given to them by God's Emissary are unlike anything else they have been given. Hellfire is the promised reward for lying about God's Emissary.

472 'Abd al-'Aziz from Muḥammad ibn 'Ajlān, from 'Abd al-Wahhāb ibn Bakht, from 'Abd al-Wāḥid al-Naṣrī, from Wāthilah ibn al-Asqa', from the Prophet, that he said: "The most deceitful forger is by the one who makes me say what I did not say, who makes his eyes see in dreams what they did not see, and who claims a false pedigree."

‘Abd al-‘Azīz from Muḥammad ibn ‘Amr, from Abū Salamah, 473
from Abū Hurayrah, that God’s Emissary said: “Whoever attributes
to me what I did not say, let him take his seat in Hellfire.”

Yaḥyā ibn Sulaym, from ‘Ubaydallāh ibn ‘Umar, from Abū Bakr 474
ibn Sālīm, from Sālīm, from Ibn ‘Umar, that the Prophet said:
“Whoever lies about me has a home built for him in Hell.”

‘Amr ibn Abī Salamah transmitted to me from ‘Abd al-‘Azīz ibn 475
Muḥammad, from Asīd ibn Abī Asīd, from his mother, who said: “I
said to Abū Qatādah, ‘Why do you not transmit hadith-reports from
God’s Emissary like other people?’ ‘I heard God’s Emissary say,’ he
replied, “‘Whoever lies about me, let him find a patch of Hellfire
next to him to lie upon.’” God’s Emissary said that and all the while
rubbed the ground with his hand.”

Sufyān, from Muḥammad ibn ‘Amr, from Abū Salamah, from 476
Abū Hurayrah, that God’s Emissary said: “Transmit from the Jews—
there is nothing wrong with doing so. Transmit from me, but do not
tell lies from me.”³²¹

This is the most stringent hadith-report from God’s Emissary on 477
this topic. We have relied on it, along with others, to support the
idea that we only accept a hadith-report from a trustworthy person
and that we must know the veracity of the bearers of hadith-reports
from one end of the chain of transmitters to the other.

If someone were to ask, “What indication is there in that hadith- 478
report for what you have just explained?” one should reply: It is
known with certainty that the Prophet never commanded anyone,
ever, to lie about the Jews, or about anyone else. So when he per-
mitted hadith-reports from the Jews to be accepted, then he did
not do so so that people would accept lies about them. Rather, he
permitted that such hadith-reports be accepted from those who
transmitted them when there was uncertainty about their veracity
or their dishonesty. In addition, he did not permit one to accept
anything from someone whose dishonesty is known, because it is
narrated from him that he said: “Whoever transmits a hadith-report
that he views as false is a liar.” Whoever transmits from a liar cannot

escape being considered a liar himself, since he is aware that the liar is dishonest in regard to his hadith-reports. In most cases one infers the veracity or falsity of a hadith-report by means of the veracity or dishonesty of the person who reports it, except in the case of a very few, particular hadith-reports. In such cases, one infers veracity or dishonesty with regard to it when the transmitter transmits something the like of which is inconceivable, or something that is contradicted by what is better confirmed and possesses greater indications of veracity than it.

- 479 Because God's Emissary distinguished between hadith-reports from himself and those from the Jews and said, "Transmit from me, but do not tell lies from me," one knows with certainty, God willing, that the kind of dishonesty that he prohibited is the subtle kind. It is the kind found in hadith-reports from those whose veracity is unknown. This is because, since dishonesty is prohibited in all circumstances, then there can be no greater dishonesty than that pertaining to God's Emissary (may God bless him).



AUTHORITY CONFIRMING THE UNCORROBORATED REPORT

- 480 Al-Shāfi'ī said: If someone were to say, "Cite an authority that confirms the uncorroborated report, whether such authority is in the form of a textually explicit report, some indication in such a report, or consensus," I would reply to him:
- 481 Sufyān ibn 'Uyaynah reported to us from 'Abd al-Malik ibn 'Umayr, from 'Abd al-Rahmān ibn 'Abdallāh ibn Mas'ūd, from his father, that the Prophet said: "God will make radiant any servant who hears my words, remembers them, understands them and conveys them further. Many a bearer of religious knowledge is

not himself knowledgeable, and many a bearer of such knowledge bears it to one more knowledgeable than himself. Three things will not fill a Muslim's heart with rancor: sincere devotion in works for God, sincere advice to Muslims, and binding oneself to the Muslim community. Their religious mission protects them from what they cannot see."

By recommending that one listen to what he says, preserve it, and convey it to another individual who would convey it, God's Emissary indicated that he only ordered to be conveyed from him reports that would constitute binding authority for the persons who conveyed them. This is because what was conveyed from him were rulings concerning the lawful that may be approached, the unlawful that should be avoided, penal sanctions that should be imposed, property that should be taken or awarded, and advice concerning religion and this world. It also indicated that someone who is not a scholar of religious knowledge might nonetheless be a bearer of religious knowledge, and preserve it, and yet not himself be a scholar. 482

God's Emissary also commanded that one adhere to the community of Muslims, a command that one may adduce as authority for the principle that the Muslims' consensus is binding, God willing. 483

Sufyān reported to us, saying: Sālim Abū l-Naḍr reported to me that he heard 'Ubaydallāh ibn Abī Rāfi' report from his father, who said that the Prophet said: "I had better not find any of you resting on his bench when a command that I have issued comes, whether prohibiting or commanding something, and saying, 'I don't know—we only follow what we find in the Book of God.'" 484

Ibn 'Uyaynah said: Muḥammad ibn al-Munkadir reported something similar to me, from the Prophet, but with an incomplete record of transmission. 485

This confirms that reports transmitted from God's Emissary are authoritative, and it apprises them that such reports are binding for them, even though they may not find a textually explicit ruling in the Book of God on the same topic. But this point is made elsewhere.³²² 486

487 Mālik reported to us from Zayd ibn Aslam, from ‘Aṭā’ ibn Yasār: A man kissed his wife while he was fasting. This distressed him greatly, so he sent his wife to ask about it. She went in to Umm Salamah, Mother of the Believers, and reported this to her. “God’s Emissary,” began Umm Salamah, “kisses while he fasts.” So the woman returned to her husband and reported that to him, but it only made him feel worse and he exclaimed: “We are not at all like God’s Emissary; God makes lawful for His Emissary whatever He wills!” So the woman returned to Umm Salamah and found God’s Emissary with her. “What does that woman want?” he asked. Umm Salamah told him. “Didn’t you tell her,” he asked, “that I do that?” “I told her, she went back to her husband and told him, and it only made him feel worse, and he said, ‘We are not at all like God’s Emissary; God makes lawful for His Emissary whatever He wills!’” God’s Emissary grew angry and then said, “By God! I am undoubtedly the most God-fearing of you and the most knowledgeable about His limits.”

488 I have heard someone who was able to extend the transmission of that hadith-report all the way back to the Prophet, but I cannot recall who did so.

489 Al-Shāfi‘ī said: The mention of the Prophet’s saying to Umm Salamah “Didn’t you tell her that I do that?” indicates that it is permissible to accept Umm Salamah’s report about him. This is because he would only have commanded her to report about him in a way that constituted binding authority for the one to whom she reported. This principle also holds for the report of the man’s wife, if in her husband’s view she was veracious.

490 Mālik reported to us from ‘Abdallāh ibn Dīnār, from Ibn ‘Umar, who said: While people were in Qubā’, at the morning prayer, someone suddenly came up and said, “God’s Emissary has had a Qur’anic passage revealed to him in which he has been commanded to face the prayer-direction.” So they faced toward it; their faces had been directed toward Syria, so they turned to face the Kaaba.

491 The people of Qubā’ were among the very earliest of the Allies to adopt Islam, they were knowledgeable about law, and they

already used to face a direction that God had obligated them to face. They would only have abandoned the obligation imposed by God concerning their original prayer-direction by reason of something that constituted binding authority for them. They had not met God's Emissary or heard what was revealed to him concerning the change in the prayer-direction such that they turned toward it based directly on the Book of God, the Practice of His Prophet which they had received aurally from God's Emissary, or a widely known report. Rather, they turned away from it based on an uncorroborated report—since the person who brought it was, in their view, veracious—from an obligation to which they were subject, and they abandoned it for what that person reported to them from the Prophet, to wit, that he had provided a new ruling concerning the change in the prayer-direction.

They would only have done this, God willing, on account of an uncorroborated report, certain in the knowledge that such reports, if brought by a veracious person, confirmed the existence of binding authority. They would only have introduced something new of such momentous importance into their religion in the certainty that they were entitled to do so. Moreover, they would not have omitted to inform God's Emissary of what they did in that regard. If the uncorroborated report that they accepted from God's Emissary concerning the change in the prayer-direction—which was an obligation—was something merely permissible for them, then God's Emissary would have said to them, God willing: "You were settled on a prayer-direction and you had no right to abandon it except after becoming apprised of a binding authority that was established for you, to wit, after having heard it from me, or from a widespread report, or from something stronger than an uncorroborated report from me." 492

Mālik reported to us from Iṣḥāq ibn 'Abdallāh ibn Abī Ṭalḥah, from Anas ibn Mālik, who said: "I was serving wine to Abū Ṭalḥah, Abū 'Ubaydah ibn al-Jarrāḥ, and Ubayy ibn Ka'b, when someone came up and said, 'Wine has been forbidden.' 'Get up, Anas,' said 493

Abū Ṭalḥah, ‘and break those wine jars.’ So I got up and got a mortar of ours and smashed them to pieces with its butt-end.”

494 No scholar could deny that those persons occupied a high station in regard to knowledge, proximity to the Prophet, and priority in his Companionship. They held wine to be lawful, and they were drinking it when someone came to them and reported to them that it had been made unlawful. So Abū Ṭalḥah, owner of the wine jars, ordered that the jars be broken. Neither he, nor they, nor any one of them, said, “We will continue to consider wine lawful until we meet God’s Emissary, since he is close by, or until a widespread report reaches us.” That is, they would not have poured out something lawful, since to do so would be to waste it and they were not the kind of men to do such a thing. The fact is, they would not have failed to inform God’s Emissary of what they had done, and he—if the uncorroborated report were not for them to accept—would not have failed to prohibit them from accepting the like of it.

495 God’s Emissary commanded Unays to go to a woman whose husband stated that she had fornicated, saying, “If she confesses, stone her.” In fact, she did confess, so he had her stoned. Mālik informed us of this, and Sufyān, from al-Zuhrī, from ‘Ubaydallāh ibn ‘Abdallāh, from Abū Hurayrah and Zayd ibn Khālid. Mālik and Sufyān quoted it from the Prophet, and Sufyān added Shibl in addition to Abū Hurayrah and Zayd ibn Khālid.

496 ‘Abd al-‘Azīz informed us from Ibn al-Hād, from ‘Abdallāh ibn Abī Salamah, from ‘Amr ibn Sulaym al-Zuraqī, from his mother, who said: “While we were at Mīnā, ‘Alī ibn Abī Ṭālib showed up out of nowhere on a camel, saying ‘God’s Emissary says that these are days of food and drink, so let none of you fast.’ He followed the people, still on his camel, shouting that after them.”

497 God’s Emissary would never have sent a veracious individual to convey his prohibition unless that person’s report from the Prophet was binding, by virtue of the reporter’s veracity, in the view of those subject to the prohibition against what he reported the Prophet to have prohibited. The pilgrims were there with God’s Emissary; he

was certainly able to send for them and tell them orally, or to send a number of people to them, but he sent an individual whom they knew to be veracious. He would not have sent anyone with his command unless the person sent to them had authority and that authority was established for them to compel them to accept his report from God's Emissary. If that is so—along with what I have already noted, to wit, that the Prophet was capable of sending a group to them—then, God willing, it is even more appropriate, for those who came after him and who were not able to do what those predecessors could do, or to have done what was done for them, that the uncorroborated report of a veracious individual be confirmed as authoritative.

Sufyān reported to us from 'Amr ibn Dīnār, from 'Amr ibn 'Abdallāh ibn Ṣafwān, from one of his maternal uncles, God willing, called Yazīd ibn Shaybān, who said: "We had found a stopping place for ourselves in 'Arafah"—'Amr reckoned it to be very distant from the place where the imam was standing³²³—"when suddenly Ibn Mīrbā' al-Anṣārī came up to us and said, 'I am the emissary to you from God's Emissary, commanding you to stop and stand on these, your sacred sites. To you belongs a legacy from your forefather Abraham.'" 498

God's Emissary sent Abū Bakr to oversee the Pilgrimage in the year nine [630]. Pilgrims, including the inhabitants of various regions and diverse peoples, attended. He instituted the Pilgrimage rites for them and reported to them, from God's Emissary, what they were entitled to and what was incumbent on them. He also sent 'Alī ibn Abī Ṭālib in that year, who recited for them verses from Sūrat Barā'a³²⁴ on the Day of the Sacrifice,³²⁵ when they were gathered together. He enjoined some groups to behave equitably, provided assistance for others, and prohibited still others from doing certain things. Abū Bakr and 'Alī were both known to the Meccans for their virtue, piety, and veracity. If any of the pilgrims had been ignorant about one or both of them, he could have found someone there to inform him about their qualities. God's Emissary sent only 499

one person, whose report furnished binding authority for those to whom the person was sent, God willing.

500 The Prophet dispatched governors to various regions, and we know their names and also the places to which he sent them. He sent Qays ibn ʿĀṣim, al-Zibriqān ibn Badr, and Ibn Nuwayrah to their own tribes, because their tribes viewed them as knowledgeable and veracious. The delegation from al-Baḥrayn came and recognized those who were with him, so he sent Ibn Saʿīd ibn al-ʿĀṣ back with them. He sent Muʿādh ibn Jabal to Yemen and commanded that those who obeyed him battle those who were disobedient to him, that he teach them the obligations that God had imposed on them, and that he take from them what was due from them—because of their acquaintance with Muʿādh, his stature among them, and his veracity.

501 The Prophet commanded everyone whom he appointed to a position of authority to collect what God had made mandatory for those over whom they had been appointed. None of the subject people, in our view, in regard to the veracious individual who came to them, had the right to say, “You are a mere individual and it is not for you to impose anything on us that we have not heard God’s Emissary mention as being incumbent on us.” I do not think that he would have sent people who were so well known in these regions for their veracity, except for the reasons I have explained, to wit, that binding authority was established by such people for those to whom they were sent.

502 Something similar emerges in regard to the commanders of God’s Emissary’s military expeditions. He sent an expedition to Muʿtah, appointed Zayd ibn al-Ḥārithah in charge of it, and said, “If he is killed, then Jaʿfar and if Jaʿfar is killed, then Ibn Rawāḥah.” He sent Ibn Unays as the sole commander of a detachment. He sent out all the commanders of his military expeditions in full charge of the mission, since it was incumbent on them to call to Islam those whom the call had yet to reach and to battle those whom it was lawful to battle. So, too, for every governor or leader of a military

expedition that he sent out, even though he could have sent out two, three, four, or more governors.

On one occasion he dispatched twelve different envoys to twelve different kings to summon them to Islam. He would not have sent them to anyone whom the summons to Islam had not yet reached, or for whom binding authority for accepting the summons would not have been established, or without letters about it that clearly indicated that the letters were in fact from him. He saw to it that the envoys were well known, just as he did in regard to his commanders. He sent Dihyah to a region where he was well known, and if those to whom these people were sent were ignorant about the envoy, it was incumbent on them to seek knowledge about whether the Prophet had sent him, in order to dispel their doubts about the envoy's reports. It was also incumbent on the envoy to wait until those to whom he had been sent had resolved any such doubts.

503

God's Emissary's letters continued to be sent out to his governors, conveying commands and prohibitions. None of his governors could fail to execute his orders, and he would not send any envoys unless they were viewed as veracious by those to whom they were sent. If the addressees sought certain knowledge of the emissaries' veracity, they could find it right where they were. If they had doubts about the letter that the envoys conveyed—whether it had been altered, or there was some circumstance that gave rise to the suspicion of inattentiveness on the part of the envoy—then it was incumbent on them to seek knowledge about what they doubted, so that what was proven that God's Emissary had commanded could be carried out where they were. So, too, for the letters from his caliphs after him, and their governors. The Muslims have reached consensus on this: that there should be only one caliph, only one judge, and only one commander and Imam. Accordingly, they appointed Abū Bakr caliph, and then Abū Bakr appointed 'Umar, and then 'Umar appointed the members of the committee to choose someone, and 'Abd al-Raḥmān chose 'Uthmān ibn 'Affān.

504

505 Moreover, the rulings of those who hold judgeships and others
who adjudicate are carried out, they apply penal sanctions, and
those who come after them continue to carry out their rulings,
which are reports from them.

506 In what I have explained about the Practice of God's Emissary
and then that on which the Muslims have reached consensus are
indications of the differences between testimony, reports, and rul-
ings. Is it not the case that the judge's decision against one man and
in another's favor is merely something about which he reports on
the basis of evidence that has been confirmed in his view, or on the
basis of an admission made before him by a litigant to which he then
gives effect? Since he is bound, by virtue of his report thereof, to
give effect to it, on the basis of what he knows, he is in the position
of someone who reports about what is lawful and unlawful, and he
is bound to declare it lawful or unlawful according to what he has
himself witnessed. But imagine the following situations: a judge
reports about witnesses who testified before him against someone
who was not sued in his court; or he testifies about the admission
of a litigant in a situation in which he was not bound to rule based
on that admission because the person was not sued in his court, or
because the person was sued in another judge's court and that other
judge ruled based on the testifying judge's testimony that a wit-
ness had to testify against someone that recovery should be made
against that person and in someone else's favor. In these situations,
the judge would be in the position of a witness before someone else.
His testimony would not be accepted, irrespective of whether he
was a judge, unless there were another witness to testify along with
him.³²⁶ So, too, if he were to testify before some other judge: his tes-
timony would not be accepted except on the basis of another wit-
ness, and someone else would be required to testify along with him.
The other judge could not, if the first judge is a witness, give effect
to his testimony by itself.

507 Sufyān and 'Abd al-Wahhāb reported to us from Yaḥyā ibn Sa'īd,
from Sa'īd ibn al-Musayyab, that 'Umar ibn al-Khaṭṭāb ruled that

compensation was fifteen camels for the loss of the thumb, ten for the index finger, ten for the middle finger, nine for the ring finger, and six for the little finger.

Al-Shāfi‘ī said: Since it was well known to ‘Umar, though God knows best, that the Prophet ruled that compensation for the loss of the hand was fifty camels, and that the hand comprises five digits of differing beauty and utility, he assigned compensation for their loss according to a descending scale and ruled that an appropriate amount of the blood-price for the entire hand be ratably allocated. That is an analogy based on a report. When we found the letter from the family of ‘Amr ibn Ḥazm, which stated that God’s Emissary said: “Every finger that is there is worth ten camels,” they came to adopt that rule, but they did not accept the letter of the family of ‘Amr ibn Ḥazm, though God knows best, until it was confirmed for them that it was in fact a letter from God’s Emissary.³²⁷ 508

That hadith-report contains two indications. One is that the report was accepted. The other is that the report should be accepted at the time it is confirmed, even if the practice of the Imams did not accord with the like of what was in the report that they subsequently accepted. There is also an indication that if the practice of one of the Imams is in force, and then he finds a report from the Prophet that contradicts his practice, he should abandon his practice in favor of the report from God’s Emissary. There is another indication, too, to wit, that the hadith-reports from God’s Emissary are self-confirming, not confirmed by virtue of the practice of someone else who lived later. The Muslims did not object in this case and say, “‘Umar applied a different rule to us and also to the Emigrants and the Allies.” Neither you nor anyone else presented anything contrary to it.³²⁸ Rather, they did what was incumbent on them when they accepted the report from God’s Emissary and abandoned every practice that contradicted it. Had that report reached ‘Umar, he would have adopted it, too, God willing, just as he adopted other rulings from God’s Emissary that reached him. This he did out of fear of God, in order to do what was necessary 509

by following the command of God's Emissary, and on account of his knowledge that no one has authority alongside God's Emissary and that obedience to God lies in following the command of God's Emissary.

510 If someone were to ask, "Can you show me an instance in which 'Umar had one practice and then adopted another based on a report from God's Emissary?" I would reply: And if I found that for you? "Producing something like that for me would indicate two things: first, that 'Umar might hold a view based on his personal opinion if he could not find a Prophetic practice; and second, that if there is such a practice, it is mandatory for him to abandon his own practice and for people to abandon every practice which a Prophetic practice, if extant, contradicts. It also invalidates the idea that an account of Prophetic Practice can only be confirmed by a subsequent report, and one would know that nothing that is contrary to Prophetic Practice can weaken it."

511 I said: Sufyān reported to us from al-Zuhrī, from Sa'īd ibn al-Musayyab: 'Umar ibn al-Khaṭṭāb used to say, "The blood-price belongs to the kin-group and the wife does not inherit any of the blood-price paid in compensation for her husband's death." This was until al-Ḍaḥḥāk ibn Sufyān reported to him that God's Emissary had written to him stating that he should make the wife of Ashyam al-Ḍibābī inherit from his blood-price, and 'Umar adopted that ruling. I have explained this hadith-report elsewhere.³²⁹

512 Sufyān from 'Amr ibn Dīnār and Ibn Ṭāwūs, from Ṭāwūs, that 'Umar said: "I will remember in my prayers anyone who has heard something from the Prophet about tort compensation for a fetus." Ḥamal ibn Mālik ibn al-Nābighah stood up and said, "I was with two young women of mine"—that is, two co-wives—"when one struck the other with a rolling pin and her fetus emerged stillborn. God's Emissary ruled that the damages were a choice slave." "Had I not heard that, I would have ruled otherwise," said 'Umar, or, according to someone else, "We nearly ruled in a similar case according to our personal opinion." So 'Umar retracted his judgment on account

of the hadith-report of al-Ḍaḥḥāk, overturning his own ruling and then he reported that had he not heard that, he would have judged otherwise in the case. He also said, “We nearly ruled in a similar case according to our personal opinion.”

Al-Shāfi‘ī said: This report shows, though God knows best, that Prophetic Practice, once it became known, provided that one hundred camels were payable in compensation for the tort of wrongful death. It could only be the case that the fetus be born alive, in which case it would be compensated with one hundred camels, or stillborn, in which case there would be no compensation. When the ruling of God’s Emissary was reported to him, he submitted to it. He only allowed himself to follow Prophetic Practice, even if it was contrary to existing practice or pertained to a matter about which he had previously had his own opinion but in regard to which he was unaware of any precedent from God’s Emissary. So when something contrary to his own practice reached him, he adopted the ruling of God’s Emissary and abandoned his own ruling. That is how he behaved in all his affairs, and that is how people are bound to act. 513

Mālik reported to us from Ibn Shihāb, from Sālim: ‘Umar ibn al-Khaṭṭāb brought everyone back from a military expedition based on the report of ‘Abd al-Raḥmān ibn ‘Awf. Al-Shāfi‘ī said: That is, when he set out for Syria and it reached him that there was a plague there.³³⁰ 514

Mālik from Ja‘far ibn Muḥammad, from his father: ‘Umar mentioned the Zoroastrians and said, “I do not know how to treat them.” “I give witness,” said ‘Abd al-Raḥmān ibn ‘Awf, “that I heard God’s Emissary say, ‘Make your practice with the People of the Book your practice with them.’” 515

Sufyān, from ‘Amr, that he heard Bajālah say: “‘Umar did not take the poll tax from the Zoroastrians until ‘Abd al-Raḥmān ibn ‘Awf reported to him that the Prophet had taken it from the Zoroastrians of Hajar.” 516

Al-Shāfi‘ī said: Every hadith-report that I have written down here with an interrupted transmission I have heard with a complete 517

transmission, or in a well-known form from the person who narrated it by means of a widespread transmission among the great mass of scholars, who themselves know it from another such great mass of scholars. I dislike writing down a hadith-report, however, if I do not know it well by memory, for fear that the book may grow too long. Some of my books are now unavailable to me, so I have used what I believe to be correct, from memory, in accordance with what scholars know. I have also abbreviated things for fear that this book may grow too long. Thus, I have introduced some of what is sufficient, but without going into great depth about every aspect of such religious knowledge.

518 ‘Umar accepted the report of ‘Abd al-Raḥmān ibn ‘Awf concerning the Zoroastrians, and therefore collected the tax from them, while reciting «among the people who have been given the Book, until they pay the tribute readily, having been humbled»³³¹ from the Qur’an. He had previously been reciting the passage about battling the unbelievers until they submit,³³² unaware of anything from the Prophet pertaining to the Zoroastrians. In his view, they were unbelievers, not People of the Book, but then he accepted the report of ‘Abd al-Raḥmān ibn ‘Awf from the Prophet about the Zoroastrians and followed it. Bajālah’s hadith-report reaches all the way back to the Prophet; he met ‘Umar ibn al-Khaṭṭāb while an adult and was a secretary to one of his governors.

519 If someone were to ask, “Did ‘Umar seek out another report, even though there was a man there who reported something to him?” one should reply: ‘Umar would only have done so, once the man had already given him a report, for one of three reasons. The first would be as a precaution—even though binding authority was confirmed by the uncorroborated report, the report from two persons is stronger evidence and only enhances its confirmation. I have seen among those who affirm the uncorroborated report some who seek out a second report to go with it. Even though accounts of the Practice of God’s Emissary come to him from five different directions, yet if he has a sixth transmitted to him he writes it down.

This is because whenever reports are mutually corroborating³³³ and reinforcing, that better establishes their authority and better puts at ease the mind of the one listening. I have also seen judges who affirm the testimony of two or even three credible witnesses and yet who say to the one in whose favor their evidence is given, “Give me more witnesses.” By doing that he merely wants to put his mind at ease; and if the person in whose favor the evidence is given does not produce additional witnesses, the judge still rules in his favor in reliance on the two. The second would be that he does not know the one reporting the hadith-report, so he hesitates to accept his report until someone else whom he knows can come to report about it. Thus it is for those who report but are unknown—their reports are not accepted. Reports are only accepted from well-known persons whose qualifications are such that their reports are considered worthy of acceptance. Finally, it could be that the one who reported to him was someone whose opinion was not, in his view, acceptable, so he rejected his report until he could find someone else whose opinion was acceptable.

If someone were to ask, “In your view, which of these reasons did ‘Umar adopt?” we would reply: In the case of the report of Abū Mūsā, he was merely being cautious, because Abū Mūsā was trustworthy and reliable in his view, God willing. If someone were to ask, “What indicates that?” we would reply: Mālik ibn Anas related the hadith-report about Abū Mūsā from Rabī‘ah from more than one Medinese scholar. Also, ‘Umar said to Abū Mūsā, “I harbor no suspicions about you, but I fear lest people falsely attribute sayings to God’s Emissary.”³³⁴ 520

If he says, “That is an interrupted transmission,” I would reply: Its authority is confirmed, since it is not permissible for someone who is an Imam in the religion, whether ‘Umar or anyone else, to accept an uncorroborated report on one occasion—and his acceptance of it would only have been based on the fact that, in his view, it furnished binding authority—and then reject it on another. Indeed, that is never permitted for a scholar of sound mind. Neither is it 521

permitted for a judge to rule on the basis of two witnesses' testimony once and then refuse to do so another time, unless they have been impugned or he is ignorant of their credibility. 'Umar, however, was a paragon of knowledge, intellect, trustworthiness, and virtue.

522 The Book of God (blessed and exalted) contains an indication of what I have explained. God said: «Indeed, We sent Noah to his people»;³³⁵ «And We sent Noah to his people»;³³⁶ «We have made revelations to Abraham and Ishmael»;³³⁷ «And to 'Ād We sent their brother Hūd»;³³⁸ «And to Thamūd We sent their brother Šāliḥ»;³³⁹ «And to Madyan We sent their brother Shu'ayb»;³⁴⁰ and «The people of Lot denied the truth of those who were sent. When their brother Lot said to them, “Will you not be God-fearing? I am a faithful Emissary for you. Fear God and obey me.”»³⁴¹ And He said to His Prophet Muḥammad (God bless him): «We have made revelations to you, as We made them to Noah»³⁴² and «Muḥammad is only an emissary. There have been emissaries who have passed away before him.»³⁴³

523 God (sublime His praise) established authoritative proof for His creatures in His prophets by means of the signs by which they differentiated themselves from His other creatures. This authoritative proof was confirmed by these signs for all who witnessed the prophets' conduct and the indications associated with them, by means of which they differentiated themselves from others and from those who came after them. For these purposes, it did not matter whether these events were witnessed by an individual, or by more than one person: such authoritative proof was established by an individual witness among them in the same way that it was established by more than one witness.

524 God said: «Coin for them a parable: the inhabitants of the settlement, when those who were sent came to them; when We sent two men to them, but they called them liars; so We reinforced them with a third. The three said, “We have been sent to you.” They said,

“You are only mortals like us. The Merciful has not sent down anything. You are simply telling lies.”»³⁴⁴

Al-Shāfi‘ī said: God made the proofs apparent to them by means of two men, and then a third, but in like fashion He established proof for many nations by means of an individual. The fact that more emissaries could have been added for emphasis does not mean that such proof could not be established by an individual if God gave him something by which to distinguish himself from other people save the prophets. 525

Mālik reported to us from Sa’d ibn Ishāq ibn Ka’b ibn ‘Ujrah, from his paternal aunt Zaynab bint Ka’b, that al-Furay’ah bint Mālik ibn Sinān reported to her: She came to the Prophet to ask his permission to return to her family among the Khudrah clan. Her husband had gone out in search of some runaway slaves of his until he caught up with them near al-Qaddūm and they killed him. So she asked God’s Emissary, “May I return to my family? My husband left me in a home that he did not own.” She said, “God’s Emissary said, ‘Yes.’ So I left, and when I was in my room or in the mosque, he called for me, or ordered someone to call for me. ‘What did you say, again?’ he asked. I repeated the story for him in which I mentioned what had happened to my husband, and he said, ‘Remain in your home until the decree is fulfilled.’³⁴⁵ So I fulfilled the waiting period there, four months and ten days. When ‘Uthmān sent for me to ask about that, I reported it to him, and he followed it and ruled accordingly.” ‘Uthmān, in his position of leadership, knowledge, and virtue ruled, while among the Emigrants and Allies, on the basis of the report of a lone woman. 526

Muslim reported to us from Ibn Jurayj, who said al-Ḥasan ibn Muslim reported to me, from Ṭāwūs, who said: “I was with Ibn ‘Abbās when Zayd ibn Thābit said to him, ‘Do you hold that a menstruating woman should leave the pilgrimage before she has visited the Sacred House?’ ‘I do not think so,’ replied Ibn ‘Abbās, ‘but ask the woman So-and-so from the Allies whether the Prophet 527

commanded her to do that.' Zayd ibn Thābit returned, smiling, and said, 'What I think is that you're right.'"

528 Al-Shāfi'ī said: Zayd heard the prohibition against pilgrims leaving before they had visited the Sacred House. In his view, the menstruating woman, as a pilgrim, was included in that prohibition. When Ibn 'Abbās held that she should leave if she had made the visit on the Day of Sacrifice, Zayd thought it was wrong. But when he informed Zayd, from the woman, that God's Emissary had ordered her to do that, he asked and she reported it to him and he believed her. He took the view that it was his duty to retract his opinion which was in conflict with that of Ibn 'Abbās, though the basis for Ibn 'Abbās's view constituted binding authority on its own, apart from the report from the woman.

529 Sufyān, from 'Amr from Sa'īd ibn Jubayr, who said: "I said to Ibn 'Abbās, 'Nawf al-Bikālī claims that Moses, the companion of al-Khaḍīr, is not the Moses of the Jews.'³⁴⁶ 'The enemy of God lies!' said Ibn 'Abbās. 'Ubayy ibn Ka'b reported to me: "God's Emissary gave a sermon before us and then mentioned the story of Moses and al-Khaḍīr in a way that indicated that the Moses of the Jews was the companion of al-Khaḍīr.'"

530 Ibn 'Abbās, with all his religious knowledge and piety, still deemed the report of Ubayy ibn Ka'b to be confirmed, on its own, from God's Emissary to such an extent that he deemed a fellow Muslim a liar on the basis of it—because Ubayy ibn Ka'b had transmitted something to him from God's Emissary indicating that the companion of al-Khaḍīr was indeed Moses of the Jews.

531 Muslim and 'Abd al-Majīd reported to us from Ibn Jurayj, that Ṭāwūs reported to him that he had asked Ibn 'Abbās about performing two bowings after the afternoon prayer, and that he had prohibited him from doing them. Ṭāwūs said, "So I said to him, 'I will not omit them!' and Ibn 'Abbās replied, '«When God and His Emissary have decided a matter, it is not for any believing man or woman to have any choice in the affair. Whoever disobeys God and His Emissary has gone astray in manifest error.»"³⁴⁷

Ibn ‘Abbās viewed the authority for that prohibition as established for Ṭāwūs by virtue of Ibn ‘Abbas’s report from the Prophet, and, by reciting the Book of God, he indicated that it was obligatory for Ṭāwūs to recognize that he had no choice in the matter once God and His Emissary had decided a matter. At that point, Ṭāwūs had learned of the decision of God’s Emissary by means of the report from Ibn ‘Abbās alone. Ṭāwūs did not reject it by saying, “That is the report of you alone, and I do not regard it as confirmed from the Prophet since it is possible for you to be forgetful.” If someone were to say, “Wouldn’t he have been unwilling to say such a thing to Ibn ‘Abbās?” one should reply: Ibn ‘Abbās was too virtuous for anyone to be wary of asking him about an obligation that the person viewed as correct. Ibn ‘Abbās prohibited Ṭāwūs from performing the two bowings after the afternoon prayer, and Ṭāwūs informed him that he would not stop including them until Ibn ‘Abbās informed him that the Prophet had forbidden them.

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Sufyān, from ‘Amr, from Ibn ‘Umar, who said: “We used to engage in sharecropping arrangements, and we thought there was nothing wrong with doing so until Rāfi‘ claimed that God’s Emissary had prohibited them, so we stopped using them for that reason.”

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Ibn ‘Umar used to prosper from sharecropping, viewing it as lawful. However, once someone who was above suspicion reported to him that God’s Emissary had prohibited it, after receiving that report, he no longer allowed himself to engage in it, no longer employed his personal opinion once something had come from God’s Emissary, and did not say, “No one has ever found fault with us for doing this before, and we still do it today.” This clarifies that the fact that someone engages in a certain practice after the time of the Prophet, when that practice is not done pursuant to a report from the Prophet, does not weaken a report from the Prophet to the contrary.

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Mālik reported to us from Zayd ibn Aslam, from ‘Aṭā’ ibn Yasār: Mu‘āwiyah ibn Abī Sufyān sold a goblet of gold or silver for more than its weight. Abū l-Dardā’ said to him, “I heard God’s Emissary forbid the like of that.” “I see nothing wrong with it,” replied

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Mu'āwiyah, whereupon Abū l-Dardā' said, "Can anyone please explain why I should ever forgive Mu'āwiyah! I report to him about God's Emissary, and he reports to me about his personal opinion! There is no country where I could live together with you!"

536 Abū l-Dardā' took the view that binding authority had been furnished for Mu'āwiyah by virtue of his report. When Mu'āwiyah took a different view, Abū l-Dardā' left the land where Mu'āwiyah resided, considering it an enormity to abandon the report from a trustworthy person about God's Emissary.

537 It was reported to us that Abū Sa'īd al-Khudrī met a man and reported something to him from God's Emissary. The man mentioned another report that contradicted it and Abū Sa'īd said, "By God, let no roof ever shelter the two of us together!" Al-Shāfi'ī said: He viewed it as indefensible for anyone informed of a report not to accept that report from him. The person had, moreover, mentioned a report from the Prophet that contradicted the report of Abū Sa'īd. There are, however, two possible interpretations of that other report, one that might have contradicted the report of Abū Sa'īd and one that might not have.³⁴⁸

538 Someone about whom I have no suspicions reported to us from Ibn Abī Dhi'b, from Makhlad ibn Khufāf, who said, "I purchased a slave and profited by him, but then a defect appeared in him, and I litigated about this before 'Umar ibn 'Abd al-'Azīz. He ruled in my favor that I could return the slave, but against me in that I had to return the profit as well. So I went to 'Urwah and informed him about it, and he said, 'I will go to him this evening and tell him that 'Ā'ishah reported to me that God's Emissary ruled in a similar case that profit is retained because of liability for risk of loss.' So I hurried to 'Umar and reported to him what 'Urwah had reported to me from 'Ā'ishah, from the Prophet, and 'Umar said, 'How lightly I took this judgment that I rendered. God knows that I only wanted to achieve the truth therein, but now that an account of the Practice of God's Emissary concerning it has reached me, I reject the judgment of myself, 'Umar, and implement the Practice of God's

Emissary.’ ‘Urwah went to him and he ruled in my favor, that I could take the profit from the one in whose favor he had previously ruled against me regarding it.”

Someone from Medina about whom I have no suspicions reported to me from Ibn Abī Dhi’b, who said: “Sa’d ibn Ibrāhīm ruled against a man in a case on the basis of the personal opinion of Rabī’ah ibn Abī ‘Abd al-Raḥmān. So I reported to him from the Prophet something that was contrary to his ruling. Sa’d said to Rabī’ah, ‘This is Ibn Abī Dhi’b, a trustworthy person in my view, who reports something to me from the Prophet that is contrary to what you have ruled.’ ‘You engaged in legal interpretation, and your ruling has already come into force,’ protested Rabī’ah. ‘How strange,’ cried Sa’d, ‘that I should put into effect the ruling of my mother’s son and reject that of God’s Emissary! Instead, I will reject the ruling of my mother’s son and put into effect that of God’s Emissary.’ So Sa’d called for the written record of the judgment, tore it up, and ruled in favor of the one against whom he had ruled.” 539

Al-Shāfi’ī said: Abū Ḥanīfah ibn Simāk ibn al-Faḍl al-Shihābī reported to me, saying, Ibn Abī Dhi’b transmitted to me from al-Maqburī, from Abū Shurayḥ al-Ka’bī: In the year of the victory over Mecca [630], the Prophet said: “Whoever loses a kinsman due to a wrongful killing has the best of two options. If he prefers, he can take the blood-price, or if he prefers, he can take retaliation instead.” Abū Ḥanīfah said, “I said to Ibn Abī Dhi’b, ‘Do you adopt this, O Abū Ḥārith?’ He struck me in the chest, yelled at me, and hurled abuse at me, saying, ‘I transmit something to you from God’s Emissary and you ask whether I have adopted it? Yes, I have adopted it! That is the obligation incumbent on me and on anyone else who hears it. God chose Muḥammad from among the people, guided them by means of him and through his assistance, chose for them what He chose for him, and did this by means of his words. It is incumbent on people to follow him, willingly or otherwise; Muslims have no choice about this!’ He would not quiet down,” concluded Abū Ḥanīfah, “until I implored him.” 540

541 There are enough hadith-reports concerning the confirmation of the uncorroborated report that some of these should suffice. The path of our forebears and the generations after them, up to those whom we have met, has remained thus. Thus it remains, too, for the scholars in the various regions, as has been related to us from those scholars who taught us, from those scholars who taught them.

542 Al-Shāfi‘ī said: We found Sa‘īd in Medina saying, “Abū Sa‘īd al-Khudrī reported to me from the Prophet,” in regard to money-changing, and he considered Abū Sa‘īd’s hadith-report confirmed as Prophetic Practice. He would also say, “Abū Hurayrah transmitted to me from the Prophet,” and considered Abū Hurayrah’s hadith-reports confirmed as Prophetic Practice. He also narrated from other individuals and considered their hadith-reports confirmed as Prophetic Practice.

543 We found ‘Urwah saying, “Ā’ishah transmitted to me: ‘God’s Emissary ruled that profit is retained because of liability for risk of loss,’” and he considered this hadith-report confirmed as Prophetic Practice. He also narrated many other things from her, from the Prophet, and considered them confirmed as Prophetic practices that could make things lawful or unlawful. Similarly, we found him saying, “Usāmah ibn Zayd transmitted to me from the Prophet” in regard to a great deal of material that he thus considered confirmed as Prophetic practices. He would also say, “Abdallāh ibn ‘Umar transmitted to me from the Prophet.” He accepted reports from others, too. He considered the report of each of them alone, by itself, confirmed as Prophetic Practice. Then we found that he began to say, “Abd al-Raḥmān ibn ‘Abd al-Qārī transmitted to me from ‘Umar” and “Yaḥyā ibn ‘Abd al-Raḥmān ibn Ḥāṭib, from his father, from ‘Umar,” and he considered each one confirmed as a valid report from ‘Umar.

544 We also found al-Qāsim ibn Muḥammad saying, “Ā’ishah transmitted to me from the Prophet.” He would also say in hadith-reports from others, “Ibn ‘Umar transmitted to me from the Prophet,” and he considered the report of each, alone, confirmed as Prophetic

Practice. He would also say, “‘Abd al-Raḥmān and Mujammi’, the two sons of Yazīd ibn Jāriyah, transmitted to me, from Khansā’ bint Khidām, from the Prophet,” and he considered her report confirmed as Prophetic practice, the report of a lone woman.

We found ‘Alī ibn al-Ḥusayn saying, “‘Amr ibn ‘Uthmān reported to us from Usāmah ibn Zayd, that the Prophet said, ‘No unbeliever shall inherit from a Muslim, and no Muslim from an unbeliever.’” He considered that rule confirmed as a Prophetic practice and so did others on the basis of his report. Similarly, we found Muḥammad ibn ‘Alī ibn al-Ḥusayn reporting from Jābir, from the Prophet, and from ‘Ubaydallāh ibn Abī Rāfi’, from Abū Hurayrah, from the Prophet, and he considered all of those reports to be confirmed as Prophetic Practice. 545

We also found Muḥammad ibn Jubayr ibn Muṭ‘im, Nāfi’ ibn Jubayr ibn Muṭ‘im, Yazīd ibn Ṭalḥah ibn Rukānah, Muḥammad ibn Ṭalḥah ibn Rukānah, Nāfi’ ibn ‘Ujayr ibn ‘Abd Yazīd, Abū Salamah ibn ‘Abd al-Raḥmān, Ḥumayd ibn ‘Abd al-Raḥmān, Ṭalḥah ibn ‘Abdallāh ibn ‘Awf, Muṣ‘ab ibn Sa’d ibn Abī Waqqāṣ, Ibrāhīm ibn ‘Abd al-Raḥmān ibn ‘Awf, Khārijah ibn Zayd ibn Thābit, ‘Abd al-Raḥmān ibn Ka’b ibn Mālik, ‘Abdallāh ibn Abī Qatādah, Sulaymān ibn Yasār, ‘Aṭā’ ibn Yasār, and other hadith-transmitters from Medina, all saying, “So-and-so transmitted to me”—meaning a certain man among the Companions of the Prophet—“from the Prophet.” Or they would say so in regard to individuals among the Successors, and then, “from a man among the Companions of the Prophet, from the Prophet,” and we considered it confirmed as Prophetic Practice. 546

We also found this to be the practice of ‘Aṭā’, Ṭāwūs, Mujāhid, Ibn Abī Mulaikah, ‘Ikrimah ibn Khālid, ‘Ubaydallāh ibn Abī Yazīd, ‘Abdallāh ibn Bābāh, Ibn Abī ‘Ammār, Muḥammad ibn al-Munkadir, and the Meccan hadith-transmitters. We also found Wahb ibn Munabbih in Yemen thus; Makḥūl in Syria; ‘Abd al-Raḥmān ibn Ghanm, al-Ḥasan, and Ibn Sīrīn in Basra; and al-Aswad, ‘Alqamah, and al-Sha’bī in Kufa; as well as the various transmitters, including the prominent ones among them in the major urban centers. It has 547

been preserved from all of them that they considered the uncorroborated report from God's Emissary as confirmed, submitted to it, and rendered opinions on the basis of it. Each one of them accepted it from those above him, and those below him accepted it from him.

548 If it were permissible for anyone to claim that, in regard to the religious knowledge of specialists, the Muslims past and present have reached consensus confirming the uncorroborated report and use of the same, since none of the Muslims' jurists is known to have disagreed about the confirmation of the uncorroborated report, then it would be permissible for me to do so. But instead, I say this: I have never learned anything to suggest that any of the Muslims' jurists have disagreed about confirming the uncorroborated report, because of what I have explained, to wit, that such reports are used and cited by all of them.

549 A man might say, based on a misimpression, "Such-and-such a hadith-report and such-and-such a hadith-report were narrated from the Prophet, and yet So-and-so has an opinion that contradicts one of the two hadith-reports." In my view, however, it is not permissible for a scholar to deem uncorroborated reports as confirmed in many cases and use them to make things lawful and unlawful and then to reject such a report unless he has another that contradicts it; or what he heard and those from whom he heard it are more trustworthy in his view than those who transmitted the hadith-report that contradicts it; or the person who transmitted it to him is not a good memorizer; or that person or one of the other transmitters above him who transmitted it to him is suspicious in his view; or finally, unless the hadith-report has two possible meanings, and he develops a speculative interpretation and adopts one of the two meanings over the other. It is not permissible, God willing, for anyone to imagine, wrongly, that a jurist of sound intellect would confirm a practice by means of an uncorroborated report time and again and then abandon that practice because of another similar report or a more trustworthy one, except for one of the above reasons, to wit, because of a speculative interpretation like those that

pose difficulties for interpreters of the Qur'an, suspicions about the one who conveys the report, or knowledge of a report that is contrary to it.

If someone were to say, "There is hardly any jurist anywhere who does not narrate much that he adopts and only a little that he rejects," then I would reply that to reject such reports is only permissible for him for the reasons already given. Or, he may narrate an opinion from one of the Successors, or someone after them, that he is not bound to adopt. He might simply have narrated it so that the opinion in question would become known, whether he agrees with it or not, not because he views it as binding authority. If he does not follow one of these paths, which would justify his failure to adopt such a report, then he has erred greatly and has no excuse for not adopting it, though God knows best. 550

If someone were to ask, "When you say 'authority,' does it have different meanings?" one should reply, God willing: Yes. If he says, "Can you clarify that?" we say: As for whatever is a clear, explicit scriptural passage or a widely agreed upon Prophetic practice, there is simply no excuse for ignoring them and neither may one doubt either of them. Whoever refuses to accept them must be urged to repent. As for those accounts of Prophetic practices that are among the reports within the competence of specialists—the kind of reports that can be inconsistent, that are susceptible to speculative interpretations, and that come by way of an isolated transmission—in my view, they constitute binding authority for scholars. Scholars may not reject what is textually explicit³⁴⁹ in them, just as they must accept the testimony of credible witnesses. It is not the case that these—such reports or the witnesses—produce certainty in the way that textually explicit passages from the Book or reports that are widely disseminated from God's Emissary do. If someone has doubts about such reports, we do not say to him, "Repent!" Rather, we say, "Since you are a scholar,³⁵⁰ you should not doubt, just as you should not do anything other than judge according to the testimony of credible witnesses, even though they could be mistaken. Indeed, 551

you must render judgment thereon in accord with their apparent veracity, and God is responsible for whatever is unknowable about them.”

552 He asked: “Is authority established by a hadith-report with an interrupted transmission for the one who knows that hadith-report? Are there differences among instances of interrupted transmission? Or is it the same as other kinds?” Al-Shāfi‘ī said: I said to him: There are differences among instances of interrupted transmission. Those Successors who actually saw the Companions of God’s Emissary and transmitted a hadith-report from the Prophet with an interrupted transmission must have such hadith-reports evaluated according to the following considerations.

553 One consideration is that one must investigate those hadith-reports that those Successors promulgate with incomplete records of transmission.³⁵¹ If persons of reliable memory also transmit these reports, with a full chain of transmission all the way back to God’s Emissary, with a similar purport, then that is an indication of the credibility and the memory of those from whom the Successor in question accepted it. If, however, he is alone in transmitting a hadith-report characterized by an interrupted transmission and does not have it in common with those who have a transmission that reaches all the way back, one can still accept his version of it if it is as just described. In such a case, however, one must investigate whether the hadith-report with the incomplete record of transmission agrees with other things that are accepted from those who transmit religious knowledge, other than the individual transmitters of the incompletely transmitted one from whom he accepted it. If such a report is found, then that is an indication that strengthens his incomplete transmissions, though it is weaker than the first situation mentioned above. If such a report is not found, then one looks to see what opinions have been narrated from some of the Companions of God’s Emissary. If such an opinion is found to agree with what is narrated from God’s Emissary, then that is an indication that the Successor in question only accepts such hadith-reports from a

credible source, God willing. Another indication exists when one finds that the great mass of scholars give legal opinions to the same effect as what is narrated in an interrupted way from the Prophet.

Al-Shāfiʿī said: Another consideration is whether he names those from whom he transmits and does not name any unknown persons or persons whose transmissions are undesirable. One can use that to draw inferences about his credibility in regard to what he narrates from the Prophet. Also, if he has a hadith-report in common with anyone from among those of good memory, his should not contradict that person's report, and if it does contradict it, then his hadith-report should be less complete.³⁵² These are all indications of the credibility of the source of his hadith-reports. To the extent that he is the opposite of what I have described, that detracts from his hadith-reports, so that it would not be allowed to accept such hadith-reports from him. But if the indications of the credibility of his hadith-reports are as I have described, then we prefer that one accept them from him.

We cannot claim that the authority established by such hadith-reports is established to the same degree as in the case of those which reach uninterruptedly all the way back to the Prophet. That is, the point about the incomplete record of transmission is that it is unknowable. Perhaps the hadith-report was taken from someone whose narration would be considered undesirable were he to be named. Some reports with interrupted transmissions—if they accord with similar reports that are incompletely transmitted—could possibly come from a source that, if named, would be unacceptable. In addition, the opinion of one of the Prophet's Companions, if made on the basis of the Companion's personal opinion, might agree with it, which fact could indicate the credibility of the source of the report in a very strong way, upon further investigation. On the other hand, the Successor may have been mistaken about the transmission when he heard the opinion of one of the Prophet's Companions agree with it.³⁵³ Something similar is possible in cases where it agrees with one of the jurists.

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556 As for persons who lived after those of the oldest³⁵⁴ Successors who had frequent occasion to see some of the Companions of God's Emissary, I know of none whose hadith-reports with incomplete records of transmission are accepted, and they are not accepted for several reasons. One is that they are too permissive in regard to those from whom they narrate. Another is that their incomplete transmissions show indications of weak sources. Still another is the frequency of distortion in their reports, which makes it more likely that a misunderstanding occur, or they have a weak source from which the report has been accepted.

557 I have long experience with some of the scholars and have come to see that they have either one kind of disposition or its opposite. I have seen some who are satisfied with only a little knowledge and who want nothing more than to acquire such knowledge from the kind of source from which one might otherwise decline to obtain it, or even from somewhere better, so that they are among those who fall short in knowledge. I have seen others who find fault with that path and desire to increase their knowledge to such an extent that they are led to accept things from persons from whom it would have been better to refrain. I have seen heedlessness affect most of them, so that they accept things from persons whose like, or even better, should be rejected. It also happens that such scholars accept things from those whose weakness is known to them, if those things agree with their own opinions. Also, they reject the hadith-report of a trustworthy person if it contradicts their own opinion. Some of them are affected by such things in multiple respects. Whoever concerns themselves with religious knowledge on the basis of experience and a minimum of heedlessness should be discomfited by every incomplete record of transmission from anyone after the oldest Successors because of the indications that are clearly evident in such transmissions.

558 "Why," he asked, "did you distinguish between the oldest Successors, who actually saw most of the Companions of God's Emissary, and those who only saw some of the Companions but not others?"

Because of the excessively long period of time that intervened for those who did not see most of them.³⁵⁵ “So why,” he asked, “do you not accept incomplete records of transmission from them and from every jurist who lived after them?” Because of what I just explained, I said.

“Can you find a hadith-report that goes back to God’s Emissary, 559
but with an incomplete record of transmission, from a trustworthy
person, but which has not been adopted by any jurists?” he asked.
Yes, I replied.

Sufyān reported to us from Muḥammad ibn al-Munkadir: A man 560
came to the Prophet and said, “O Emissary of God, I have property
and a family and my father has property and a family, and he wants
to take my property and use it to feed his family.” “You and your
property,” replied God’s Emissary, “belong to your father.”

“As for us,” he said, “we do not adopt that, but do any of your 561
associates?” No, I said, because whoever adopts that grants to the
prosperous father the right to take the property of his son. “Of
course,” he said, “and no one holds that opinion. So why do people
disagree with it?” Because, I said, it is not confirmed as coming from
the Prophet. Also, when God gave the father a share of his son’s
inheritance and made the father like any other heir—and in some
cases his share is less than all the other heirs—that indicated that his
son owns property separately from his father.

“And Muḥammad ibn al-Munkadir,” he asked, “is in your view a 562
paragon of trustworthiness?” Absolutely, I replied, superior in reli-
gion and piety, but we do not know from whom he accepted that
hadith-report. I have already described for you the case of the two
witnesses who testify against someone, but whose testimony is not
accepted until two people testify to their credibility, or someone
else testifies to their credibility.³⁵⁶ “Can you mention one of your
hadith-reports that is relevant to that?” he asked. Yes, I replied.

A trustworthy person reported to us from Ibn Abī Dhi’b, from 563
Ibn Shihāb: God’s Emissary commanded a man who laughed during
prayer to repeat his ablutions and the prayer. We do not accept

this because of the incomplete transmission. Then, a trustworthy person transmitted that very hadith-report to us from Ma'mar, from Ibn Shihāb, from Sulaymān ibn Arqam, from al-Ḥasan, from the Prophet.

564 Ibn Shihāb is, in our view, an Imam in regard to hadith-reports, highly selective and with trustworthy individual transmitters. He only names certain Companions of the Prophet and then the best of the Successors. We know of no hadith-transmitter who names better and more well-known persons from whom he transmits than Ibn Shihāb.

565 "How then," he asked, "did he come to accept something from Sulaymān ibn Arqam?" He viewed him as a person of virtue, knowledge, and intellect, I replied, accepted something from him, and held a good opinion of him. He was silent about his name either because Sulaymān was younger than he or for some other reason. Ma'mar asked Ibn Shihāb about his hadith-report from him³⁵⁷ and Ibn Shihāb attributed it to him. Since it can happen that even someone like Ibn Shihāb narrates something from Sulaymān, notwithstanding what I have stated about Ibn Shihāb, then no one else is safe from such a thing either.

566 "Can you find a confirmed practice from God's Emissary" he asked, "that reaches all the way back, but in regard to which everyone holds a contrary view?" No, I replied, but I might find people disagreeing about such a practice. Some would adopt it, and some would hold an opinion contrary to it. As for a confirmed account of a practice about which they agree in adopting a contrary opinion, I find none at all, unlike the case of those incompletely transmitted from God's Emissary.

567 Al-Shāfi'ī said: I said to him: You ask about the authority for rejecting a hadith-report with an incomplete transmission. At the same time, you reject it, and then you go too far and reject a report with a complete record of transmission that, in our view, compels you to adopt it!



CHAPTER ON CONSENSUS

Al-Shāfi‘ī said: Someone said to me: “I have understood your doctrine concerning God’s rulings and the rulings of His Emissary, and that whoever accepts something from God’s Emissary does so from God, since God imposed the obligation to obey His Emissary. Moreover, binding authority has been furnished, on the basis of what you have said, to the effect that it is not lawful for any Muslim who knows a scriptural proof-text or an account of a Prophetic practice to hold an opinion contrary to either, and I know that this is an obligation from God. What authority can you cite for following what people have agreed upon in instances where there is no explicit textual ruling from God and none related from the Prophet? Do you claim what others do, that is, that their consensus can only be based on a confirmed instance of Prophetic Practice, even if they have not related such an instance?” 568

As for what people have agreed on and then stated that it is a report of the opinion of God’s Emissary, I replied, it is as they say, God willing. As for that which they do not expressly relate from him, it is possible either that they in fact related it from God’s Emissary, or that it is something else. We may not consider it to have been related from him if it is not expressly so identified, because it is not permissible to relate something unless it was actually heard, nor is it permissible to relate something that might be misunderstood and that might entail something other than what the Prophet actually said. Rather, we have professed what they professed, following their precedent. For we know that when accounts of the practices of God’s Emissary exist, they will not escape the entirety of them, even though some such accounts might escape some of them. We also know that the entirety of them will agree neither on something 569

contrary to the Practice of God's Emissary, nor on an error, God willing.

570 If he asks, "Is there something that indicates what you have said and that supports it?" one should reply: Sufyān reported to us from 'Abd al-Malik ibn 'Umayr, from 'Abd al-Raḥmān ibn 'Abdallāh ibn Mas'ūd, from his father, that God's Emissary said: "God will make radiant any servant who hears my words, remembers them, understands them, and conveys them further. Many a bearer of religious knowledge is not himself knowledgeable, and many a bearer of such knowledge bears it to one more knowledgeable than himself. Three things will not fill a Muslim's heart with rancor: sincere devotion in works for God, sincere advice to Muslims, and binding oneself to the Muslim community. Their religious mission protects them from what they cannot see."

571 Sufyān reported to us from 'Abdallāh ibn Abī Labīd, from Ibn Sulaymān, from his father, that 'Umar ibn al-Khaṭṭāb spoke to the people in al-Jābiyah³⁵⁸ and said: "God's Emissary stood among us just as I am standing among you now. 'Honor my Companions,' he said, 'and then those who follow them, and then those who follow them. Then lies will appear such that a man will swear without being asked to swear, and testify without being sworn. Whoever wishes to delight in the midst of Paradise, let him bind himself to the community. Satan is with the loner, but farther from two. No man is ever alone with a woman without Satan being a third. Whoever is delighted by his own good works and upset by his bad deeds is a believer."

572 "What," he asked, "is the meaning of the Prophet's command to bind oneself to their community?" It can have only one meaning, I replied. "How could it bear but one?" If their community is dispersed in different countries, I answered, then no one is able to bind himself to the community formed by the bodies of people who are dispersed. Indeed, the bodies of Muslims, unbelievers, the God-fearing, and sinners are all found together, so being bound to their bodies has no meaning at all because it is not possible, and because

the mutual proximity of bodies produces nothing. Being bound to them has no meaning except in regard to what their community considers lawful and unlawful, and obedience regarding those two categories.

Whoever holds the opinion held by the Muslim community has bound himself to the community, and whoever goes against the opinion held by the Muslim community has gone against those persons to whom he was commanded to bind himself. Heedlessness lies in division. As for the community, it is not possible for there to be in it, as a whole, heedlessness about the meaning of a scriptural proof-text, a Prophetic practice, or an argument based on analogy. 573



CHAPTER ON THE CONFIRMATION OF ANALOGICAL REASONING AND LEGAL INTERPRETATION; WHEN ANALOGIZING IS NECESSARY AND WHEN NOT; WHO MAY PERFORM ANALOGIES

Someone asked: “On what basis do you say that one may opine using analogies in regard to matters for which there is no explicit scriptural proof-text, no Prophetic practice, and no instance of consensus? Is an analogy tantamount to an explicit, binding textual report?” If, I replied, an analogy were an explicit scriptural text or a practice, then one would say, as for every explicit scriptural proof-text, “That is God’s ruling,” and for every explicitly delineated practice, “That is the ruling of God’s Emissary,” but we do not say that for an analogy. 574

“Then what is analogical reasoning?” he asked. “Is it legal interpretation? Or are they different?” They are two terms for the same concept, I replied. “What do they share?” he asked. There is, for 575

everything that befalls a Muslim, I said, a binding rule or something that indicates the way to attain the correct answer in regard thereto. If there is a rule concerning that specific thing, one must follow it. If there is no such rule, then one should seek what indicates the correct answer to the issue in question by means of legal interpretation. Legal interpretation is equivalent to analogical reasoning.

576 “What do you think,” he asked, “about scholars who draw analogies? Do they attain the objectively certain result, in the sense that they hit upon the truth as it is with God? Is it allowable for them to perform analogies differently from each other?³⁵⁹ Does the scholar’s legal responsibility arise in the same way in every legal problem, or does it arise differently in different problems? What authority gives them license to base analogies on the apparent meaning but not on the true meaning, and by what authority is it allowable for them to reach different results when analogizing? Does what they are legally responsible for in regard to themselves differ from their responsibility toward others? Who is entitled to engage in legal interpretation and then analogical reasoning with regard to himself, but not for others, and who is entitled to engage in analogical reasoning both for himself and for others?”

577 I said: Knowledge has different aspects. Some of it involves objective certainty that encompasses both the apparent and the true meaning, but some involves only truth in the apparent meaning. Objectively correct knowledge includes whatever is an explicit textual rule of God’s or a practice of God’s Emissary that one large group has transmitted onward from another such group. These are the two ways that one adduces evidence to show that what has been made lawful is in fact so and that what has been made unlawful is in fact so. In our view this is something that no one is allowed to ignore or to doubt.

578 When specialists come to know a Prophetic practice from the kind of report that is within their special competence, a practice known to scholars and extant among some or all of them, they do so by means of the veracity of the specialist who reports it from God’s

Emissary. This is the kind of report that is binding for scholars to adopt, and it is the truth in regard to its apparent meaning—just as we impose capital punishment on the basis of two witnesses: that, too, is a truth in the apparent meaning, since it is possible for two witnesses to be mistaken.

Knowledge is also provided by consensus. 579

Finally, there is knowledge provided by legal interpretation on the basis of analogical reasoning, involving the attempt to hit upon the truth. That, too, is a type of truth belonging to the apparent meaning according to the view of the scholar drawing the analogy, not according to the view of scholars in general. No one but God knows the unseen. 580

“If knowledge about it is sought through analogical reasoning,” he asked, “and one draws a valid analogy, do the persons who do that agree in most such cases, or might we find them disagreeing?” Analogical reasoning is of two types, I replied. One of them is where the matter is within the scope of the rationale underlying the basis for the analogy. In regard to such instances, analogical reasoning does not lead to divergent results. Then there is the case where the thing resembles several matters among those bases for an analogy. In that case, one relates it to the basis most appropriate for it and that resembles it most. The persons who reason analogically may differ in this case. 581

“Can you provide me with something,” he asked, “by which I can know that knowledge has two aspects, one being objective certainty about the truth in both the apparent and the true meanings and the other a kind of knowledge that involves certainty about truth in the apparent meaning but not the true meaning, and can it be something that I already know about?” What if, I replied, we were in the Sacred Mosque, looking at the Kaaba: Would we both be legally responsible for facing toward it in the objectively correct direction? “Yes.” 582

When prayers, alms, and the Pilgrimage, and other things, too, I said, are imposed on us as obligations—are we legally responsible 583

for objectively correct knowledge of these, in the sense that we must perform what is incumbent on us based on an objectively correct understanding? “Yes.” So when we are obliged to give the fornicator one hundred lashes, and the one who falsely accuses someone of unlawful sexual intercourse eighty, to execute those who become unbelievers after adhering to Islam, and to amputate in the case of him who steals, are we legally responsible for doing that to someone whom we know with objective certainty to be confirmed as the one on whom we impose the punishment? “Yes.” Are the two the same, what we are legally responsible for in regard to ourselves and in regard to others, since we know about ourselves what others do not, and in regard to others we cannot know what we are unable to perceive firsthand the way that we can perceive such things in relation to ourselves?³⁶⁰ “Yes.”

584 Are we ourselves legally responsible, I asked, wherever we might be, for facing toward the Sacred House, according to the prayer-direction? “Yes.” Do you find that we have objectively correct knowledge, I continued, of whether we have hit upon the correct direction, that is, that of the Sacred House, by facing the prayer-direction? “In comparison with what you found when you could actually see it, no,” he replied, “but in regard to carrying out what you were legally responsible for, yes.” So what we are legally responsible for in regard to seeking a hidden object, I pressed, is other than what we are legally responsible for in regard to seeking a visible one? “Yes.”

585 So, I said, we are legally responsible for accepting the credibility of a man on the basis of his appearance. We marry him off or make him an heir according to how his religion appears to us. “Yes.” But inwardly, I said, he might not be credible at all, is that not so? “That is possible for him,” he said, “but you are only legally responsible, in regard to him, for what is apparent.” Is it licit for us, I continued, to marry him off, make him an heir, and permit his testimony, and is it forbidden for us to take his life, all on the basis of his outward

appearance? And is it unlawful for others, if they know him to have become an unbeliever, to do anything but execute him, and to prevent his being married, being made an heir, and whatever else we might have awarded him? “Yes.” So, I went on, the obligation we have in regard to one man can differ depending on the extent of our knowledge and the knowledge of others? “Yes,” he affirmed, “and each of you³⁶¹ is carrying out what is incumbent on you, to the extent of your knowledge.”

Thus, I said, do we say to you in regard to things for which there is no rule from a binding explicit text. We search using legal interpretation, by drawing analogies. In that situation we are only legally responsible for the truth as we perceive it. 586

“So you find yourself ruling on one matter in inconsistent ways?” he asked. Yes, I replied, if the underlying grounds for the ruling differ.³⁶² “Mention some examples of this,” he requested. A man might admit a liability before me for something owed to God or to a human being, I replied, so I would find against him on the grounds of his admission against interest. If he made no such admission, I would find against him on the basis of some evidence that has been established against him. If no evidence is established against him, and yet an allegation is made against him and I command him to swear in order to be exonerated and he refuses, and then I command his opponent to swear, we find against him on the basis of his opponent’s oath if he refuses the oath that would exonerate him. We know that his admission against his own interest—because of his strong desire to retain his own property and his fear that someone else might wrong him based on their strong desire to obtain his property—is more credible against him than the testimony of someone else, because someone else may be mistaken or lie against him. The testimony of credible witnesses against him is closer to the truth than his refusal to take the oath in conjunction with the oath of his opponent who is not a credible witness. So I find against him on the basis of various grounds, some of which are stronger than others. 587

588 “That is all true,” he said, “except that if he refuses to take the oath, we find against him on the grounds of that refusal.” So you find against him on account of something even weaker than what we used to find against him.³⁶³ “Of course,” he replied, “but I disagree with you over the underlying principle.” The strongest thing on the basis of which you would find against him is his admission against interest, even though he might acknowledge the claim of another Muslim out of forgetfulness or by mistake, and that would lead me to find against him. “Certainly,” he replied, “but that is all you are legally responsible for.”

589 Do you not see, I asked, that I am legally responsible for the truth in its two aspects? One of them is a truth that involves objectively certain knowledge of both the apparent and the true meaning, and the other is a truth in what is apparent, and not in the true meaning. “Indeed,” he replied, “but do you find any support for that in a scriptural proof-text or a Prophetic practice?” Yes, I said, as I have explained to you with regard to my legal responsibility for the prayer-direction, both in relation to myself and others. God said: «They encompass none of His knowledge apart from that which He wishes.»³⁶⁴ He brought them of His knowledge only what He wished and as He wished: «None repels His judgment; He is swift to reckoning.»³⁶⁵ He also said to His Prophet: «They ask you about the Hour, “When is the time of its anchoring? What mention can you make of it?” To your Lord is its goal.»³⁶⁶

590 Sufyān from al-Zuhrī from ‘Urwah, who said: “God’s Emissary continued to ask about the Hour until God revealed to him ‘What mention can you make of it?’ and then he stopped.”

591 God said: «Say, “None of those who are in the heavens and the earth knows the unseen, except God”»³⁶⁷ and God (blessed and exalted) also said: «God—He has knowledge of the Hour; He sends down the rain; He knows what is in the wombs. No soul knows what it will earn tomorrow, and no soul knows in what land it will die. But God is Knowing and Informed.»³⁶⁸

Thus, people are obligated to do and say what they are com- 592
manded to do, to comply with that command, and not to overstep
it. This is because they never give themselves anything, but rather it
is a gift from God. So we ask God for a gift in a way that leads to the
fulfillment of His due and an increase in His gift to us.



CHAPTER ON LEGAL INTERPRETATION

“Can you find something,” he asked, “that makes what you say about 593
legal interpretation permissible, along with what you explained,
that you can cite?” Yes, I said, by inference from God’s saying «From
wherever you approach, turn your face toward the Sacred Mosque;
and wherever you may be, turn your faces toward it.»³⁶⁹ “What is
‘toward’ it?” he asked. Facing it, I replied. The poet said:

The unbroken she-camel’s disease has so infected her,
that she fills the eyes’ gaze *toward* her.³⁷⁰

One knows with certainty that whoever turns to face the Sacred 594
Mosque, among those whose dwellings are remote from it, finds a
direction by means of interpretation, using those things that indi-
cate its direction in order to face the Sacred House. After all, he is
only legally responsible for facing toward it, though he may not know
whether he has correctly faced in the direction of the Sacred Mosque
or been mistaken. He might see indications that he knows and face
it to the extent of his knowledge, and someone else might come to
know other indications and face it to the extent of *his* knowledge,
even though their two acts of facing it might differ from one another.

“If I grant you that,” he said, “I will have to grant that there is 595
legal disagreement in some circumstances.” Say what you like about

it, I replied. “I hold that it is not permissible.” It is like you and me, I said, on a road somewhere, both scholars. I say, “There is the prayer-direction,” and you claim the opposite of what I claim. Upon which of us is it incumbent to follow his companion? “Neither of you³⁷¹ need follow his companion,” he said. So what is incumbent upon them? “If you say that it is not mandatory for either of them to pray until they know with certainty,” he replied, “then they will never know what is hidden with certainty. So either they omit the prayer, or the obligation to face the prayer-direction is canceled for them, and they pray in whatever direction they like. But I do not hold either of those views, and I find no way to avoid saying that each should pray as he sees fit and that they are not legally responsible for anything else; or I say that they are legally responsible for a correct result based on both appearances and the true state of affairs and that they are absolved of a mistake in regard to the true state of affairs but not in regard to appearances.”

596 Whichever of the two you hold, I replied, is an argument against you, because you distinguished between the true ruling and the apparent ruling, yet that is what you denied to us when you said, “If they³⁷² disagree, I hold that one of them must be objectively mistaken.” “Yes,” he conceded. You have permitted the prayer, I continued, while knowing that one of the two is objectively mistaken. Indeed, it is possible that both are mistaken. This argument also compels you, I said, to accept my characterization of testimony and analogical reasoning. “I don’t see any way out of this,” he said, “but I hold that it is an excused mistake.”

597 I said to him: God said: «Do not kill game while you are in the sacred state. If any of you kill such game intentionally, there must be recompense—the like of what he has killed from his livestock, as two just men from you decide, an offering to reach the Kaaba.»³⁷³

598 He commanded them to find “the like” and he made “the like” subject to the ruling of two just men. So when He outlawed all edible game animals without restriction, the game animals were assigned animals whose bodies were “like” theirs. Some of the

Companions of God's Emissary who ruled on this judged that the hyena was equivalent to the ram, the gazelle to the goat, the hare to the lamb, and the jerboa to the kid. One knows with certainty that they intended that "like" be construed as pertaining to the body, not to value. Had they ruled according to the value, their rulings would have differed according to the prices of game in various locales and times, and yet their rulings regarding them are one. One also knows with certainty that the jerboa is not like the kid in body, but it was the thing that most nearly resembled it and was thus made its "like." That is an example of analogizing; they approximate one another as do the goat and the gazelle, but are also somewhat disparate, as are the kid and jerboa.

Because it is "the like" in body among game animals, excluding birds, one may only do what 'Umar considered permissible, though God knows best, which is to examine the game animal that was killed and render recompense with what most nearly physically resembles it. If the game animal exceeds it a little, then it is raised up to the next thing that most nearly resembles it, as the hyena exceeded the she-goat by a little and so was raised up to the ram, but the jerboa was a little smaller than the lamb and was therefore lowered to the kid. Game birds have no "like" among livestock because of their differing physiques. Their killing is compensated based on reports of precedent and by analogy with the situation in which someone destroys something that is forbidden to him and must pay its value to the owner. Al-Shāfi'ī said: The ruling concerning its value is uniform to the extent that it is determined as of that day and in that locale, but it varies according to time and place such that the game bird in one locale is worth a dirham and in another worth only part of a dirham. 599

God also commanded us to permit the testimony of credible witnesses. Since it was stipulated that we accept such witnesses, then that indicates that we should reject witnesses whose testimony is not likely to be credible. But there is no hallmark of what it means to be a credible witness that distinguishes between such a witness 600

and one who is not credible that might be discerned from his body or his speech. Rather, the hallmark of his veracity is merely ascertained from his personal circumstances. If good outward behavior predominates in his affairs, then he is accepted, even if there is some shortcoming that affects him to some extent; after all, no one that we have seen is free from faults. So if the faults and the pious works are mixed, then there is nothing to do in regard to him except to exercise legal interpretation according to what predominates in his affairs, by distinguishing between his good and bad aspects. This being so, then it will inevitably be the case that legal interpreters differ about him. If his good behavior is more apparent, then we accept his testimony, but if another jurist comes along and perceives his outward behavior as bad, then that jurist is obligated to reject him. Two jurists will have ruled in one matter, one to reject him and the other to accept him, and that is legal disagreement, but each did what was incumbent on him.

601 “Cite a hadith-report,” he requested, “on the permissibility of legal interpretation.” Certainly, I said.

602 ‘Abd al-‘Azīz reported to us from Yazīd ibn ‘Abdallāh ibn al-Hād, from Muḥammad ibn Ibrāhīm, from Busr ibn Sa‘īd, from Abū Qays, client of ‘Amr ibn al-‘Āṣ, from ‘Amr ibn al-‘Āṣ, that he heard God’s Emissary say: “If the jurist rules, and performs legal interpretation, and is correct, then he gets two rewards; and if he rules, and performs legal interpretation, and is mistaken, then he gets one reward.”

603 ‘Abd al-‘Azīz reported to us from Ibn al-Hād, who said: “I transmitted that hadith-report to Abū Bakr ibn Muḥammad ibn ‘Amr ibn Ḥazm, and he said, ‘Thus did Abū Salamah transmit it to me from Abū Hurayrah.’”

604 “That is an isolated narrative,” he said, “and others besides you would reject it from me, and others besides me would reject it from you. There are also those besides me who have a point in regard to it that they would like to ask you about.” But you and I, I queried, are among those who consider it confirmed? “Yes,” he replied. Those

who reject it, I continued, know what we have already noted about its confirmation and other matters. So what is the point about which they want to ask me? “God’s Emissary,” he said, “in something narrated about legal interpretation, called it ‘mistaken’ and ‘correct.’” That particular authority does not support your argument, I said. “How so?” Because the Prophet mentioned that one is rewarded more for one than for the other, and such a reward cannot be for something not allowed, and one is not rewarded for a mistake that is then excused. This is because if that were the case, when someone was told, “Perform legal interpretation based on appearances” and he did so according to outward appearances, as he was commanded, and then erred but had his error excused, then it would have been most appropriate to punish him for the mistake—as far as we know, though God knows best. The most one could do for him would be to forgive him, and it would be unlikely that he would receive a reward for what was not allowed for him to do. In this is an indication of what we have said, to wit, that he is only legally responsible for legal interpretation when making a ruling according to outward appearances, not in regard to what is unknowable, though God knows best.

“That may be as you say,” he said, “but what is the meaning of ‘correct’ and ‘mistaken’?” It is just like facing the Kaaba, I said. Those who can actually see it get its direction correct with certainty, but those who are out of view from it must seek it, however far or near they may be from it, and some get it correct and some get it wrong. The same act of facing it can be both correct and mistaken, if by inquiring about “correct” and “mistaken” you intend that one say, “So-and-so correctly directed himself toward what he sought and did not mistake it, but another So-and-so directed himself toward what he sought in a way that was mistaken, even though he exerted himself greatly in seeking it.”

“So it is,” he said. “Do you think that one could describe legal interpretation as ‘correct’ in some other sense?” Yes, I replied, because one is only legally responsible for legal interpretation in

regard to what is unknowable. If one engages in it, then one has achieved a correct result in regard to that for which he was legally responsible, which is being correct, in his view, on the basis of outward appearances. Only God knows the true state of affairs. We know that when two people disagree over the prayer-direction, even though they might achieve a correct result by means of legal interpretation, they are disagreeing in regard to their search for a specific object—and in that case they can never achieve both an objectively correct result and a correct result through legal interpretation.³⁷⁴ This is just as we have explained in regard to witnesses and other examples. “Is it permissible to describe this as ‘correct’ in one sense but ‘mistaken’ in another?” he asked. Of course, I replied, for anything that is unknowable.

607 “Can you provide an example of that for me?” he asked. I do not think that it can be clarified by anything stronger, I replied. “Mention something else then,” he said. God made it lawful for us, I began, to marry women, two, three, or four each, or what our right hands possess, and He forbade to us our mothers, daughters, and sisters.³⁷⁵ “Of course,” he said. What if a man bought a female slave, I asked, and had her fulfill the waiting period for female slaves—would it be lawful for him to have sexual intercourse with her? “Yes,” he replied. So, I continued, he has intercourse with her and she bears him children for a period, but then he learns that she is his sister. What view should one take about his situation then? “It was lawful until he learned who she was, and then it was not lawful for him to go back to her,” he replied. One would ask you, I went on, whether one woman could be lawful and unlawful for him without either of them having done anything to create a new situation.

608 “As for what was objectively true but concealed,” he said, “she remained his sister for the whole time. But according to what was only apparently true, she was lawful to him as long as he did not know, but unlawful once he did know. Others would say that he sinned when he had intercourse with her, but the sin was lifted from him.” God knows best which of the two is the case, I said, but they

distinguished in regard to him between the ruling based on outward appearances and that based on the true state of affairs. They excused the legal interpreter's sin in regard to appearances even though they might regard him as having been mistaken, but they did not excuse it for a deliberate mistake. "Yes," he said. This is like a man, I added, who unknowingly engages in an incestuous marriage, or who marries a fifth wife after receiving a false report of the death of his fourth wife, and similar cases. "Yes," he said, "there are many such cases."

It is clear, I continued, for those among you who regard that narration as confirmed,³⁷⁶ that legal interpretation is only ever used to seek an extant but concealed object on the basis of indications, and that legal disagreement is allowed for those qualified to undertake legal interpretation. 609

"How is legal interpretation performed?" he asked. God (sublime His praise) bestowed intellects on mankind, I replied, and, by means of these, indicated to them how to distinguish between disparate things.³⁷⁷ He guided them to the truth by means of explicit texts and indications. "Give an example," he requested. He set up the Sacred House for them, I replied, and commanded them to face it if they could see it and to seek after it if they were out of view from it. He created the heavens for them, and earth, sun, moon, stars, bodies of water, mountains, and winds. He said: «It is He who has placed the stars for you, for you to be guided by them in the darkneses of land and sea»³⁷⁸ and «And signs. And men can guide themselves by the stars.»³⁷⁹ 610

He reported that they would find their way using stars and signs. 611
By His grace they knew the direction of the Sacred House with His help and assistance to them: Whoever could see it from where he was saw it. Those who could see it then reported to those who could not, and those latter ones saw mountains toward which they could face, or a star by which to be guided, or the north or south wind, or the sun, whose place of rising and setting they knew, and whose location in relation to one praying in the evening they knew, and

bodies of water, too. It was incumbent on them to take the trouble to discover the signs that indicated these things, using the intellects that He had placed in them, in order to seek the direction that faced that very object itself toward which He obliged them to turn. If they sought it out by means of interpretation, using their intellects and their knowledge of those signs, after seeking assistance from God and desiring that He aid them, then they carried out what was incumbent on them. He stated clearly for them that He had obliged them to face toward the Sacred Mosque and that facing toward it meant to face in its general direction, not that one had to face the precise direction of the Sacred House in an objectively correct manner in every circumstance.



CHAPTER ON SUBJECTIVE REASONING

- 612 I continued: If, however, it was not possible for them to know with certainty that they had faced the right direction, in the way someone who could actually see the Sacred House was able to do, then they had no right to say, “We face whatever direction we think best, without basing ourselves on any indication.” “This,” he said, “is as you say. Legal interpretation is only used to seek something, and that thing is an extant object sought by means of some indication that can be used to direct one to it, or by means of a comparison with another extant object. This clarifies that it is unlawful for anyone to opine on the basis of subjective reasoning if such reasoning contradicts a report, and a report from the Book or from Prophetic Practice is an object whose meaning the legal interpreter seeks in order to attain the correct answer, just as one who is distant from the Sacred House seeks its correct location or its direction by means of analogical reasoning. No one may express an opinion

except on the basis of legal interpretation, and legal interpretation is just as you have described, that is, the search for the true answer.”³⁸⁰

“Do you yourself,” he continued, “permit someone to say: ‘I employ subjective reasoning, without analogizing?’” In my view, I replied, that is not permissible for anyone—though God knows best. Only scholars should express any such opinions at all, not others, and they should express opinions that are related to a report by following such a report, and in situations for which there is no report, by analogizing from a report. If it were permissible to invalidate analogical reasoning, then it would be permissible for the rationalists, who are not scholars of religious knowledge, to express opinions concerning matters for which there is no report according to whatever answer they happen to have at hand based on subjective reasoning. Opinions given on the basis of anything other than a report or analogical reasoning are impermissible because of what I have cited above from the Book of God and the Practice of His Emissary, and also because of what I have noted about analogical reasoning.³⁸¹

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As for the Book and Prophetic Practice, I explained, they indicate that if the Prophet commanded that one perform legal interpretation, then the sole purpose of such interpretation can be to search for something, and searching for something can only be done on the basis of actual indications. Those indications are an analogy. “What is the relationship,” he asked, “between analogical reasoning and the indications that you discussed above?” Consider the situation, I replied, in which one man injures another man’s slave. Scholars would not tell the man, “Determine the value of a male slave!” or “of a female slave!” unless he were an expert in the market so that he could make a valuation on the basis of two criteria: first, it must be done by considering information about the price of an equivalent slave on that day; second, that can only be accomplished by considering the slave in relation to others and reasoning analogically with respect to him. One does not tell the owner of a good to assess its value unless he is an expert.

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615 Neither is it permissible to tell someone who is a jurist and credible witness, but who has no knowledge of the value of slaves, “Determine the value of this male slave!” or “of this female slave!” or “of the wages of this worker!” because if he assesses the value any of those things using something dissimilar as an indication of the value, that would be arbitrary. If that is so in regard to property of high value, and if it is easy to be mistaken in regard to the thing valued and the thing to which its value is compared, then what God has made lawful and unlawful is even more worthy of not having pronouncements made about it that are based on subjective reasoning. Subjective reasoning is pure self-indulgence. Only a scholar familiar with revealed reports and cognizant of how to make comparisons using them should express opinions about such things.

616 If that is so, then scholars should not express any opinion in such cases except on the basis of religious knowledge—and the source of religious knowledge is a binding report—by means of an analogy from the indications of what is correct. Thus, the possessor of religious knowledge who either always follows a report itself or seeks what is tantamount to a report through analogical reasoning is just like one who either keeps to the direction of the Sacred House by actually seeing it or who seeks its direction by means of interpretation, using inferences based on signs.

617 If such a person expresses an opinion that is not based on a binding report or an analogy, then that person is closer to sin than the one who expresses such an opinion without being a scholar in a situation in which nonscholars may permissibly express opinions.³⁸² God did not allow anyone after His Emissary to express any opinions except on the basis of religious knowledge that had previously come into force. The basis of such knowledge remains the Book, Prophetic Practice, consensus, non-Prophetic reports, and analogical reasoning based on these that I have described above.

618 No one may reason analogically unless he has gained the qualifications that enable him to undertake such reasoning. These

qualifications are knowledge of the rulings in God’s Book—His obligations, inculcation of manners, abrogation, unrestricted and restricted passages, and His guidance. One draws inferences about what parts of it are subject to speculative interpretations by using the practices of God’s Emissary; if there is no such practice, then using the Muslims’ consensus; and if there is no consensus, then by reasoning analogically. No one may reason by analogy unless he knows the prior practices, the opinions of the forebears, the people’s consensus, their legal disagreements, and the Arabic language. Neither may he draw an analogy unless he has a sound intellect and is able to distinguish among what is ambiguous. He should not rush to give an opinion without confirming it. He is not precluded from listening to those who disagree with him since he might, through listening, be reminded of something and thereby come to know something that had escaped him or find enhanced confirmation of the view that he believes to be correct. In this regard, it is incumbent on him to expend his utmost effort and to be honest with himself about whence he has the opinions that he professes and why he rejects what he does. Also, he must not be more uneasy about the opinion he holds than about the one that contradicts it, so that he is convinced of the superiority of what he has adopted over that which he has rejected, God willing.

As for someone whose intellect is sound but has no knowledge of what we have listed, it is not lawful for him to express opinions that are based on analogies. It is not lawful because he does not know what may serve as the basis for analogical reasoning, just as it is not lawful for a jurist of sound mind to opine about the value of a dirham when he has no expertise in the currency market. Whoever has knowledge of what we have listed through memorization only, not through true understanding, may not express opinions on the basis of an analogy, since he might not be able to understand the underlying principles. Similarly, if he is good at memorization but falls short in his intellect or in knowledge of the Arabic language, he may not reason by analogy because his understanding falls short

of the competence that would make it permissible for someone to undertake analogical reasoning. We only ever allow such persons, though God knows best, to express opinions by following some precedent, not by making an analogy.

620 If someone were to say: “Mention some reports that one can use as the basis for analogical reasoning and explain how one draws analogies,” one would respond, God willing: One uses any ruling of God’s or of His Emissary’s for which there is some indication, or any other rulings of God’s or of His Emissary’s in which the ruling was made on the basis of a particular rationale: when a case arises for which there is no textually explicit ruling, one rules in regard to it in accordance with these prior cases for which a ruling exists, if it is covered by their rationale.

621 Analogical reasoning has several different types. While they are all subsumed under the term “analogy,” one must differentiate between the two main types in regard to their starting point, their underlying basis for comparison, or both. Also, one of the two types is clearer than the other. The strongest type of analogy is when God, in His Book, or God’s Emissary forbids a little of something. It is understood that since a little of it is forbidden, then a large amount of it would be like a little of it with respect to being forbidden, or even more so, because of the superior inferential relationship of the greater to the lesser amount. Similarly, if it were praiseworthy to be obedient in a small way, then to do so in a greater way would be even more deserving of praise. Also, if God permitted a large amount of something, then a lesser amount of it should be even more permissible.³⁸³

622 If someone were to say: “Mention an example of each of these types that will clarify their nature for us,” I would reply: God’s Emissary said: “God made the blood and property of a believer unlawful to other persons, and He also made it unlawful that people think anything but good of a believer.” Because he forbade that one hold any but good opinions about individual believers, and also forbade that one express any bad opinions about them publicly, then any

opinion that goes beyond a publicly expressed bad opinion, such as stating that a believer had uttered an explicit falsehood, would be more deserving of being declared unlawful, and the more one exceeded that, the more unlawful it would be.

God said: «Whoever does an atom's weight of good will see it. 623
Whoever does an atom's weight of evil will see it.»³⁸⁴ Whatever
is more than an atom's weight of good is more praiseworthy, and
whatever is more than an atom's weight of evil is more grievously
sinful.

Moreover, God permitted us to shed the blood of pagan combat- 624
ants with whom there is no treaty and to take their property. He did
not prohibit us from doing that in any respect of which I am aware.
So if we injure them, short of taking their lives, or seize their prop-
erty, short of taking it all, those actions are even more permissible.

Some scholars refuse to call this analogizing and say that it is 625
simply the meaning of what God made lawful and unlawful and
praised and censured, since that meaning is included within what
God made lawful and unlawful generally; it is the thing itself, not
an analogy based something else. They hold the same opinion con-
cerning other matters, too, in regard to things that are covered by
the rationale of either what is licit, and therefore declared licit, or
what is illicit, and therefore declared illicit. In fact, they refuse to
call anything an analogy unless it involves something that can be
compared with something else that could resemble it for one of two
different reasons. In that case, one would analogize on the basis of
one of those reasons rather than the other.³⁸⁵ Others say that what-
ever lies outside the express terms of an explicit passage from the
Book or from an account of Prophetic Practice, and yet is covered
by the same rationale, is an analogy, though God knows best.

. . .

If someone were to say: “Mention some types of analogy that show 626
how they can vary in clarity, in their underlying reasons, and in their
provision of binding authority, apart from this first type, knowledge

of which can be attained by most persons,” one should reply, God willing, God said: «Mothers are to suckle their children for two whole years for those who desire to complete the suckling. It is the duty of the father to provide for them and clothe them in the proper manner» and «If you desire to seek suckling for your children by a wet-nurse, it is no sin for you if you hand over what you have given in the way recognized as proper.»³⁸⁶

627 God’s Emissary commanded Hind bint ‘Utbah to take as much money from her husband Abū Sufyān as she and her children needed—and they were his children—in the proper manner³⁸⁷ and without consulting him. The Book of God and the Practice of His Prophet indicated that the father is financially responsible for his children while they are nursing and also for their expenses while they are young. The child is from the father, so the father may be compelled to support the child when the child is not able to fend for himself. Similarly, in my view, if the father reaches a point where he cannot fend for himself by earning a living and has no property, then the child must support the father, by providing maintenance and clothing—this by analogy with the father’s obligation to the child. That is, the child is from the father, and the child may not let anything from which he himself comes perish, just as the father may not let one of his own children perish, since that child is from him. So, too, grandparents, no matter how many generations removed, and descendants, no matter how many generations removed, are covered by this rationale, though God knows best. I hold that each should provide maintenance for the needy among them who is not gainfully employed, and that such persons are entitled to maintenance from the gainfully employed person who is self-sufficient.

. . .

628 God’s Emissary ruled—concerning a slave in whom a defect had been concealed from the buyer that only appeared after the buyer had profited by him—that the buyer was entitled to return the slave and to retain the profits because of his liability for the slave. We

inferred—since that profit was not the subject of the original bargain such that a share of the price was allocated to it, and since it was part of the buyer’s property at the time when, if the slave had died, he would have died while belonging to the buyer—that he only granted this right to the buyer because such profit came into being as part of his property and as something for which he thus assumed liability. We adopted a similar ruling in the case of the fruit of date palms; the milk, wool, and offspring of livestock; the child of a female slave; and any other subsequently arising items in the buyer’s property, for which he is liable. This principle also applies to sexual intercourse with a nonvirgin female slave and to her labor.³⁸⁸

Some of our associates, and others, too, have diverged from us on this point. One said: “The profit, services, and goods of slaves—apart from sexual intercourse—belong to their owner who bought them, and he may return the female slave when there is a defect. He is not, however, entitled to return the female slave after having sexual intercourse with her, even if she is a nonvirgin. Neither may he keep the fruit of date palms, the milk and wool of livestock, or the child of the female slave. This is because all of this—livestock, female slaves, date palms, and profit—are analytically distinct from the case of the slave who generates a profit.”³⁸⁹

I said to the one who so held: Consider your opinion that the profit is not from such a slave, but that the fruit is from the trees, and that the child is from the female slave. Do they not all share in the fact that they come into being as property of the buyer and are not part of the bargain? “Indeed,” he replied, “but they differ from each other, too. What the owner gets differs: the trees’ dates, the child of the female slave, and the products from the livestock all emanate from those things, but the profit generated by a slave does not emanate from him. It is something that he works to earn and then acquires.”

I said to him: What if someone counters your view with an argument similar to yours, saying, “The Prophet ruled that profit is retained because of liability for risk of loss. The profit is just what

you have stated in regard to his working to earn something, which activity distracts the slave from the service of his master, and the master takes that profit as compensation for the lost service and for his maintenance of his slave. If, by contrast, the slave were given a gift, the gift would not distract him from anything at all, and it would not belong to the second owner but should be returned to the first owner.”³⁹⁰ “On the contrary,” he replied, “it belongs to the second owner, in whose possession the slave was when the gift was made; it is part of his property.” But that, I replied, is not profit that emanates from him; that has some character other than profit. “Even so,” he said, “it does not emanate from the slave.” So, I asked, does it differ from the underlying idea of profit, because it has a completely different character from profit? “Even though,” he replied, “it has a different character from profit, it nonetheless comes into being as part of the buyer’s property.”

632 I said: But so, too, do the fruit and other produce come into being as part of the buyer’s property. Once the fruit is separated from the date palm, it is no longer part of the date palm. When it is sold, the date palm does not follow it, and it does not follow the date palm, and so, too, for products from livestock. Indeed, the profit is even more worthy of being returned along with the slave—because he might labor over something that would follow him in that case³⁹¹—than the fruit of the date palm, if one were to grant that only one of the two could be returned.

633 Some of our associates held our opinion concerning profit, sexual intercourse with the nonvirgin female slave, and the fruit of date palms, but disagreed with us in regard to the child of the female slave. All these things are the same, however, because they come into being as part of the buyer’s property. Otherwise, none of this would be consistent: the owner who purchased the slave would get nothing to keep³⁹² except the profit and the service, and he would not get whatever the slave is gifted, or finds, or anything else that he generates, whether buried treasure or anything else, except profit and service—nor, by the same token, the fruit of date

palms, the milk of livestock, or anything else, because none of it would be profit.

. . .

God's Emissary prohibited the exchange of gold for gold, dried dates for dried dates, wheat for wheat, and barley for barley, except in like amounts, in a present exchange. When God's Emissary dealt with these particular categories of foodstuffs—and people were so eager for them that they came to be sold by volume—he did so under two rubrics. One involved a like-for-like exchange in which one party delivers immediately and the other incurs a debt for delayed payment, and the other involved the delivery by one party of slightly more goods than the other in a present exchange. Thus, whatever was covered by the rationale applicable to such transactions was made unlawful by analogizing from the items mentioned in the Prophet's prohibition. Accordingly, this applied to any foodstuffs sold by weight, because I have found them to share the same principle, whether solid or liquid—and what is liquid is covered by the same rationale as what is solid—since they are all staples, foodstuffs, or both. I have also found people so concerned about accuracy in measuring these things that they came to be sold by weight, and weight may be more accurate than volume and covered by the same rationale for these purposes. These include honey, clarified butter, olive oil, sugar, and other solid and liquid foodstuffs sold by weight.

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If someone were to say, "Is it possible that foodstuffs sold by weight be governed by an analogy from gold and silver sold by weight, so that analogizing from one thing sold by weight to another sold by weight would be better than analogizing from sales by weight to sales by volume?" One should reply, God willing: What keeps us from accepting what you have described, to wit, analogizing from sales of some things based on weight to sales of other things based on weight, is that a valid analogy involves comparing two things and then applying the ruling of the one to the other. So, for example, if you were to analogize honey and sesame oil to dinars and dirhams,

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and you had only made it unlawful that one of the exchanged items exceed the other if they were of the same kind, would it be permissible to use dinars and dirhams as immediate payment to purchase honey and clarified butter for delayed delivery? If he says, “You would permit such a transaction for the same reason that Muslims permit it,” one would reply, God willing: The fact that the Muslims permit this indicates to me that the permission for it is not arrived at by means of analogy.³⁹³ If it were based on analogical reasoning, then the same rule would apply to both, and it would not be lawful that they be sold except as a present exchange, just as it is not lawful to exchange dinars for dirhams except in a present exchange.

636 If it is said, “Do you find that when you analogize from a volume sale, you use the same ruling for sales by weight?” I would say: Yes, I do not distinguish between them at all, in any circumstance.

637 “Is it not permissible,” he asked, “for you to buy a *mudd* of wheat delivered immediately for three *ratls* of olive oil with delayed delivery?”³⁹⁴ It is not permissible, I replied, to exchange any foodstuffs or beverages at all for a different foodstuff for delayed delivery. The ruling for foodstuffs sold by volume is the same as the ruling for foodstuffs sold by weight.

638 “What do you say,” he asked, “about the application of this prohibition to dinars and dirhams?” Such exchanges of them would be unlawful on their own and not ever to be analogized to foodstuffs, since they implicate a different rationale. It is inherently unlawful to exchange foodstuffs sold by volume, but one can make them the basis for an analogy with other things sold by volume and weight because those other things are covered by the same rationale—and it is possible to draw this analogy precisely because the rationale is the same in both cases.³⁹⁵

639 If he says, “Explain how dinars and dirhams are different from foodstuffs,” I would reply, I know of no one among the scholars who disagrees concerning the permissibility of purchasing foodstuffs by volume or weight, using dinars or dirhams, for delayed delivery. But that is not lawful when exchanging dinars and dirhams. And I know

of no one among them who disagrees that if I discovered a mine and paid my alms assessment from what I extracted from it, and then the silver or gold from it remained with me for a long time, I would have to pay alms on them every year. And if I were to harvest the produce of my land and paid the tithe and then it remained in my keeping for a while, I would not have to pay alms on it. Also, if I tortiously converted something that belonged to someone else, my liability for it would be calculated in dinars or dirhams, since they are the media of exchange for any property owned by a Muslim except for the blood-price.³⁹⁶

If he says, “So it is,” then I would say: Some matters are distinguishable on even fewer grounds than what I have just described for you. 640

. . .

We find generally among the scholars the view that God’s Emissary ruled in cases of mistaken killing of a free Muslim by another that one hundred camels should be paid, for which the kin-group of the tortfeasor was liable. It is also generally held by them that these are to be paid over three years, one-third each year, and that they are to consist of specific kinds of camels of specific, known age ranges.³⁹⁷ This example indicates several underlying points relating to analogical reasoning. I will mention those that come to mind, God willing. 641

We find that the scholars generally hold that liability for intentional injuries to persons and property, whether a life is taken or not, is payable out of the tortfeasor’s own property, not that of his kin-group. Liability for unintentional killing is the kin-group’s. Then, we find they have reached consensus to the effect that the kin-group pays one-third of the blood-price and up for injuries to the person. Their views diverge, however, for what is below one-third of that amount. Some of our associates say that the kin-group pays nothing if the amount is less than one-third. Others say that it pays for serious wounds that lay bare the bone³⁹⁸—that is, one-twentieth and up—but not for anything less.³⁹⁹ 642

643 I said to someone who held the view that the kin-group was liable for one-twentieth and not for anything below that: Can analogical reasoning be properly applied to Prophetic Practice in any but one of two ways? “What are they?” he asked. I said: When you say: “When I found the Prophet holding that the kin-group should pay the blood-price, I adopted that opinion as a precedent. So whatever is less than the full blood-price is payable out of the property of the tortfeasor,” and you do not reason by analogy in this case from the full blood-price to cases involving other amounts because the presumption is that it is more appropriate for the tortfeasor to be liable for his own tort than someone else, just as he is liable therefor in the case of intentional injuries. After all, God has obligated someone who commits an unintentional killing to pay the full amount and to free a slave.⁴⁰⁰ Thus, you hold that the slave should come from his own property, since the liability arises from his tort, and you exempt the blood-price from that principle, based on precedent. I, too, follow precedent in regard to the blood-price and make what is less than the full blood-price payable from his property since it is more appropriate that he be liable for his tort than someone else. This is just like what I hold concerning the wiping of footwear: it is a dispensation based on a report from God’s Emissary; I will not use an analogy to reason from it to other cases.⁴⁰¹

644 But is it possible that analogical reasoning could be employed in another way here? “What is that?” he asked. I said: When God’s Emissary distinguished unintentional killing both from torts other than homicide and from intentional homicide, and then made the tortfeasor’s kin-group liable for the blood-price in cases of unintentional homicide, it being the larger amount, I made the kin-group liable for smaller amounts in the case of accidental injury. This was because it was more appropriate that they should be liable, on his behalf, for the lesser amount, in comparison with the greater amount, or that the lesser amount be considered to be covered by the same rationale as the greater amount.⁴⁰²

“That,” he said, “is the better of the two principles on which to base an analogy, but it does not resemble the wiping of the footwear.” That is as you say, I said, God willing.⁴⁰³ Scholars have reached consensus on the kin-group’s liability for one-third of the full amount and up, and their consensus indicates that they used analogical reasoning to compare something that was less than the full amount of the blood-price with the full amount. “Yes,” he said.⁴⁰⁴ 645

I said to him: Our associate says: “The best I have heard is that the kin-group incurs liability for one-third of the full blood-price and up,” and he related that it was their practice there.⁴⁰⁵ What if someone were to adduce two authorities in response? “What are they?” he asked. You and I have reached consensus, I said, to the effect that the kin-group is liable for one-third of the blood-price and more, but we disagree about lesser amounts. Binding authority is established by virtue of your and my consensus on the one-third, and you have no report that addresses what is less than that. How would you respond to that? 646

“I would say,” he replied, “that the consensus from my side has a different basis than the conclusion you reached. The consensus from my side is merely based on an analogy from the fact that if the kin-group incurs liability for the greater amount, then it is liable for smaller amounts, too. Who made the one-third the limit for you? What if someone else were to say, ‘Rather, the kin-group incurs liability for nine-tenths but not for any amount less than that?’” What if, I replied, someone responded by saying, “The liability for one-third is too burdensome for the one who incurs it, whether I hold that he pay it jointly or that it be paid on his behalf. So it is because it is burdensome, and he is not liable for what is less than that because it is not burdensome.” “What about someone,” he asked, “who has no money except for two dirhams? Is it burdensome for him to become liable for the one-third, so that he pays the two dirhams and has no money left? And what about someone whose worldly wealth is enormous? Is the one-third burdensome for him?” 647

648 What if, I replied, someone said to you: “He would not say ‘In our view, the matter is . . .’ unless that matter were agreed upon in Medina?” “Is a matter agreed upon in Medina stronger than isolated reports?” he asked. “Why,” he continued, “did he take the trouble to relate to us something weaker than isolated reports and refuse to relate to us what is stronger—and thus binding—than the agreed-upon practice?” What if, we replied, someone were to say to you, “Because of the paucity of reports and the fact that consensus is so ample that it does not need to be related. You might do the same thing when you say that something is agreed upon?” “Neither I nor any scholar would say that it is agreed upon,” he replied, “unless every single scholar one meets expresses that opinion to you and relates it from those before him—such as the opinion that the noon prayer consists of four bowings, that wine is unlawful, and similar things. Moreover, I might find him saying ‘what is agreed upon’ and then find scholars from Medina frequently holding the opposite opinion and even that the majority of scholars in other regions hold the opposite of what he says is agreed upon.”

649 You are compelled by your opinion that the kin-group is not liable for what is less than the wound that lays bone bare, I said, just as he is in his view about the one-third.⁴⁰⁶ “There is an underlying reason,” he said to me, “which is that God’s Emissary did not issue any ruling at all about what is less than the wound that lays bone bare.” What if someone were to object, I asked him, by saying, “I will never rule at all in regard to what is less than such a wound, since God’s Emissary did not issue any ruling about it at all?” “He has no right to say that,” he replied, “since, if God’s Emissary did not issue any ruling about it at all, then it does not follow that he left all torts that are less than that uncompensated.”

650 Someone could say to you: “If God’s Emissary did not say that the kin-group is not liable for what is less than such a wound, then he has not forbidden that the kin-group be liable for what is less than that. If he had ruled that the kin-group was liable for such a wound, but had not ruled that it was liable for what was less than

it, that would not have prevented the kin-group from incurring liability for what was less.” If they can incur liability for the greater amount, then they can incur it for the lesser amount, as both you and we have held, and as I have argued against our associate. If it were admissible in your favor, it would also be admissible against you—even if the Prophet had ruled that the kin-group was liable for one-twentieth—that one say: “The kin-group is liable for one-twentieth of the blood-price, or the entire blood-price, but it has no liability for what lies between; that comes out of the tortfeasor’s assets.” But it is not permissible for anyone to say that. The opinion one should hold about that is that liability for all unintentional torts is that of the kin-group, even if it is only a dirham.

I said to him: Some of our associates have held that if a free person commits an unintentional tort against a slave and kills him or inflicts a severe injury that does not lead to death, then compensation should be paid out of his own assets, not those of his kin-group, and that the kin-group should not be liable for torts against slaves. We hold that it is a tort committed by a free person. Since God’s Emissary ruled that the free person’s kin-group bears liability for his tort against another free person, then it is a liability arising from his unintentional tort, and so, too, his tort against a slave is a liability arising from his unintentional tort, though God knows best. You adopted our opinion and held that whoever says that the kin-group is not liable for the slave could mean that it is not liable for the tort committed by a slave because it is the personal liability of the slave, not payable from the assets of his owner, separately from the slave. So you adopted our opinion and took the view that what we adduced as authority was valid and covered by the rationale found in Prophetic Practice. “Yes,” he replied.⁴⁰⁷

I said to him: Your associate and others among our associates hold that the tort against a slave is compensated relative to his price, just as the tort against a free person is compensated relative to his full blood-price. Loss of an eye is compensated with half his price, and a wound that lays bare the bone with one-twentieth of his price.

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You disagree with us about this and say, “The tort against a slave is compensated relative to the actual diminution of his purchase price.”⁴⁰⁸ “Let me begin by asking you,” he said, “about the authority for your opinion that the tort against a slave is compensated relative to his purchase price, just as that for a free person is relative to his blood-price. Do you hold this on the basis of a report or an analogy?” As for the report, I replied, it is from Saʿīd ibn al-Musayyab. “Cite it,” he requested.

653 Sufyān reported to us from al-Zuhri, from Saʿīd ibn al-Musayyab, who said: “Tort compensation for a slave is relative to his price.” I heard this from him frequently in this form, and sometimes he added: “just as the tort against a free person is compensated relative to his blood-price.”

654 A trustworthy person reported to us—namely, Yaḥyā ibn Ḥassān—from al-Layth ibn Saʿd, from Saʿīd ibn al-Musayyab, who said: “The tort against a slave is compensated relative to his price just as the tort against a free person is compensated relative to his blood-price.”

655 Ibn Shihāb said that, according to some people, Saʿīd ibn al-Musayyab added, “and he is assigned a value, like goods.”

656 “I am asking you only for a report that provides binding authority,” he said. I told you, I replied, that I do not know any reports about it from anyone further back than Saʿīd ibn al-Musayyab. “But his opinion does not constitute binding authority,” he said. I made no such claim, I replied, that you could refute. “Then cite some authority for it,” he demanded. I replied: It is based on an analogy with torts against free persons.⁴⁰⁹ “But the slave differs from a free person,” he said, “since the blood-price of the free person is a fixed amount, and the blood-price of the slave is his purchase price, so that he is closer in that regard to goods, such as camels, livestock, and other such things, since the compensation for destroying those things is their purchase price.” That argument supports the view of those who hold that the kin-group is not liable for the killing of a slave and thus works against you, I said. “How so?” he asked. I

replied: Someone could ask you, “Why do you hold that the kin-group is liable for the purchase price of the slave if a free person commits a tort against the slave that damages him to the extent of his total value—for in your view, the compensation is the same as his price—yet if he committed a tort against a camel he would be liable for the damages out of his own assets?” “His life is inviolate,” he replied. Is not the camel’s life inviolate with respect to the one who tortiously kills it? I asked. “Not,” he said, “like the inviolability of a believer.” Then, I replied, someone could object, “Neither is the slave, in his inviolability, like the free person in all respects.”

So in your view, I said, he has that same point in common with the free person. Is the kin-group liable for him, then? “Yes.” Did God not rule, I continued, that for the believer who is killed unintentionally one pays the full blood-price and frees a slave? “Yes.” And you claim, I continued, that for the slave who is killed unintentionally, one frees a slave, just as in the case of the free person, and pays his purchase price, and that his purchase price is like the blood-price? “Yes.” And you also claim that a free person can be killed in retaliation for the death of a slave?⁴¹⁰ “Yes,” he replied. And we both claim, I said, that we should kill a slave in retaliation for a slave? “I so hold as well,” he said.

I said: The free person shares in all these considerations, in both our view and yours, in regard to retaliation for injuries, but a slave has in common with the camel the fact that his blood-price is equivalent to his purchase price. So how did you elect, in the case of an injury to him, to make it like the injuring of a camel, making damages for an injury to him equivalent to the extent to which his value is diminished, but not making the injury to the camel be compensated relative to its full price, just as the injury of a free person is compensated relative to his blood-price—even though the slave has five points in common with a free person⁴¹¹ and is only distinguishable from him in one respect? Is it not more appropriate for you to base the analogy on the thing with which he has five points in common rather than on the thing with which he has only one? But

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in fact the slave has even more in common with the free person: whatever is unlawful for a free person to do is unlawful for a slave, and the slave is, in addition, subject to penal sanctions, prayers, fasting, and other obligations, and there is thus no way at all in which he is like a dumb animal.

659 “Do you,” he asked, “consider his blood-price to be his purchase price?” I view the blood-price for a woman as half that of a man, I said, but that does not prevent compensation for an injury to her from being calculated relative to her full blood-price, just as it is in the case of a man.

660 I said to him: If the blood-price is to be paid in the form of camels over three years, in thirds, then have you not claimed that the camels are tantamount to something purchased based merely on the seller’s description, and thus a debt?⁴¹² How can you object to a sale of camels, based merely on a description, with the payment for the camels being a debt, and not base the analogy for it on payment of the blood-price, an installment contract for manumission, or a dowry? Yet, in all these cases, you allow the sale of camels, based merely on the seller’s description, to become a debt? You have gone against the dictates of analogy and against the explicitly worded hadith-report from the Prophet that he once accepted advance payment for some camels and ordered that his end of the bargain be fulfilled at a later time.

661 “Ibn Mas’ūd disapproved of that,” he said. Does binding authority come from anyone but the Prophet? I asked. “No,” he replied, “if it is confirmed as coming from the Prophet.” It is in fact confirmed, I retorted, by a case in which the Prophet accepted advance payment for camels and fulfilled his end of the contract by delivering camels that were better than what was called for. It is also confirmed in regard to blood-price payments, in our view and in yours, as covered by the rationale found in Prophetic Practice. “What,” he asked, “is the report on which one bases the analogy?”

662 I said: Mālik reported to us from Zayd ibn Aslam, from ‘Aṭā’ ibn Yasār, from Abū Rāfi’: “The Prophet once accepted advance

payment from someone for camels. Some camels were brought to him and the Prophet ordered me to fulfill his end of the contract with them. ‘I can only find choice camels among these,’ I said. ‘Then give those to him,’ he said, ‘for the best people are those who are best at paying their debts.’”

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“What kind of report cannot be the basis for an analogy?” he asked. 663
One that involves a textually explicit rule of God’s, I replied, in regard to which God’s Emissary has a practice that lightens some parts of the obligation but not others. One acts in accordance with the dispensation to the extent of God’s Emissary’s dispensation, but not in regard to other things, and one cannot draw analogies from such dispensations to other things. So, too, for anything for which God’s Emissary has an unrestricted rule and then institutes a practice in regard to that same matter that differs from that unrestricted rule.

“Such as?” he asked. God imposed the obligation to perform 664
ablutions on whoever rises to pray after sleeping, I said. God said: «When you rise to pray, wash your faces and your hands up to the elbows, and wipe your heads and wash your feet up to the ankles.»⁴¹³ He made this obligation pertain to the two feet, just as He made it pertain to the other limbs that require ablutions. But when God’s Emissary wiped his footwear, it was not for us, though God knows best, to wipe a turban, a veil, or a glove, on the basis of an analogy to the footwear. We confirmed the obligation in regard to all the limbs that receive ablutions, and we recognized a dispensation for wiping the footwear, based on the Prophet’s practice of wiping, but not for anything else.

“Do you consider that to be contrary to the Qur’an?” he asked. 665
Under no circumstances, I replied, does a practice of God’s Emissary contradict the Book of God. “Then what is the meaning in this case?” he asked. The meaning, I said, is that the obligation to bring the feet into contact with water is directed at those who are

not wearing footwear that they put on in a state of complete ritual purity. “Is that a permissible linguistic usage?”⁴¹⁴ he asked. Yes, I answered, just as it is permissible for someone to rise to pray whose ablutions are still effective for him and not be intended by the obligation to perform ablutions. That is based on an inference from the fact that God’s Emissary prayed two or more prayers having performed ablutions only once.

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666 God said: «The thief, male and female: cut off their hands as a recompense for what they have acquired—an exemplary punishment from God. God is Mighty and Wise.»⁴¹⁵ Prophetic Practice indicated that God did not intend that amputation apply to all thieves.

667 Similarly, the Practice of God’s Emissary indicated, in regard to wiping the feet during ablutions, that the obligation to wash the feet pertained to someone who had not donned footwear while in a state of complete ritual purity.

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668 “What else in accounts of Prophetic Practice,” he asked, “is like this?” God’s Emissary prohibited the sale of dried dates for dried dates except in like amounts. He was asked about the sale of ripe dates for dried dates and he asked, “Do the ripe dates weigh less after they are dried?” “Yes,” it was replied. So he prohibited that. He also prohibited the *muzābanah*-sale, which is any time that something susceptible to usury and whose volume is known is exchanged for something of the same type but of an unmeasured amount whose volume is unknown. These all have several points in common.

669 The Prophet also gave a dispensation for the *‘arāyā*-sale, that is, the sale of dates on the tree in an unknown quantity for dried dates that the people who only had dates on the tree could eat. So we recognized a dispensation for the *‘arāyā*-sale, which is the sale of dates on the tree for dried dates, and which would otherwise belong in the same category as the *muzābanah*-sale, because of the dispensation

he granted. Thus, we affirmed that the prohibition against any sale of food commodities of one type, in which an unknown amount is exchanged for a known volume, be applied unrestrictedly, because of the Prophet's ruling on the *muzābanah*-sale, but we made the *'arāyā*-sale lawful, as a restriction thereupon, because the Prophet made it lawful, by excepting it from the general category of what he made unlawful. We do not use one of the two reports to invalidate the other, nor did we use the one as the basis for an analogy.

“What is the reason in this case?” he asked. There are two possible reasons, I replied. The better one, in my view, though God knows best, is that by what he prohibited in general terms he intended to include everything other than the *'arāyā*-sale. It is also possible that he provided a dispensation for it after the prohibition of the general category to which it belonged had become mandatory. Whichever of the two is the case, it is incumbent on us to obey him, by holding lawful what he made lawful and holding unlawful what he made unlawful.

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God's Emissary ruled in regard to the blood-price that the unintentional killing of a free Muslim was to be compensated by one hundred camels, and he further ruled that this was imposed on the kin-group. Intentional killing differs from unintentional killing because it incurs retaliation and is also a sin, but resembles it in that it could also involve the blood-price. When God's Emissary held that, in regard to all those who were potentially liable, payment was to be made from their assets and not from others' assets, except in the case of the free person killed unintentionally, we, too, held that the kin-group was liable for the unintentional killing of a free person just as God's Emissary ruled: everyone who is potentially liable must pay from his own assets, not others' assets, except for the unintentional⁴¹⁶ killing of a free person. We assessed liability for the intentional killing of a free person, where the blood-price was applicable, against the assets of the perpetrator, just as compensation for

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any intentional tort that he might commit would come from his own assets, though not in the case of unintentional torts. We did not analogize from his liability in cases of unintentional killing to the liability he incurs in cases other than unintentional injuries.⁴¹⁷

672 If someone were to ask, “What compensation does someone owe for an intentional tort, and what is his liability for an unintentional tort?” I would reply: God said: «Give the women their dowries as a free gift»⁴¹⁸ and «Perform prayer and pay alms»⁴¹⁹ and «But if you are prevented, give whatever offerings are feasible.»⁴²⁰ He also said: «Those who make their wives like their mothers’ backs and then return to what they have sworn not to do: the penalty is the freeing of a slave before they touch each other»⁴²¹ and «If any of you kill such game intentionally, there must be recompense—the like of what he has killed from his livestock, as two just men from you decide, an offering to reach the Kaaba or expiation: food for the destitute or the equivalent of that in fasting, that he may taste the mischief of his action. God forgives what has happened in the past; but God will take vengeance on those who repeat the offense»⁴²² and «Expiation for a broken oath is the feeding of ten destitute people with the average of the food with which you feed your families or the clothing of them or the freeing of a slave. Whoever does not find the means for that should fast for three days.»⁴²³ God’s Emissary ruled: “People are responsible for taking care of their own property during the day, but what livestock destroy at night is the liability of their owner.”

673 The Book, Prophetic Practice, and that about which Muslims do not disagree all indicate that these things are to be taken from a man’s property by virtue of a claim that becomes due against him, either in God’s favor or in favor of human beings, however such a claim may arise. No one else, moreover, is liable for such a debt on that person’s behalf. With regard to the commission of a tort, no one but the actual tortfeasor may bear financial responsibility for it except in the situation for which God’s Emissary has established a

practice that is applied restrictively, where there is an unintentional killing, or an unintentional injury against other persons.

Analogical reasoning dictates—in regard to torts against live-stock, property, and other things—that compensation be paid, as I have explained, out of the tortfeasor’s assets. This is because, as is well known, in the majority of cases one satisfies one’s liability out of one’s own assets. One does not analogize from the minority of cases while ignoring the rule suggested by reason in the majority of cases. The free man who unintentionally kills another free person is a restricted case: the kin-group is liable for compensation in that case and for any other unintentional injuries involving life or limbs. This rule is based on both reports and analogical reasoning. 674

For the death of a fetus, God’s Emissary held that a choice male or female slave be paid in compensation, and scholars valued such a slave at five camels. Because it was not related that God’s Emissary asked whether the fetus was male or female at the time he ruled, he must have made the male and female equal if the fetus was stillborn. If it was born alive and then died, then the scholars determined liability at one hundred camels for a male and fifty for a female.⁴²⁴ 675

Thus, it is not permissible to base an analogy on the case of the fetus at all, because tort liability is imposed in cases where the tort is known, with fixed, well-known compensation, which is differentiated depending on whether the victim is male or female. People do not disagree that if the fetus emerges alive and then dies, that the full blood-price is payable. If it is male, then one hundred camels, and if female, then fifty camels. Muslims do not disagree, as far as I know, that if a man mutilates corpses, no blood-price is due for any of them, and no lesser damages either. The fetus can only be either dead or alive. So when God’s Emissary ruled about it in a way that differed from the rulings concerning live and dead persons, in the situation where its state was unknowable,⁴²⁵ the ruling that he issued was one that people were obliged to follow simply because it was a command of God’s Emissary. 676

677 “Do you know any reason for this?” he asked. One reason, I replied, though God knows best. “What is it?” It is said that if you do not know whether it was ever alive, such that funeral prayers would have been said over it, and it would have inherited, then the ruling is that it is a tort against its mother. God’s Emissary fixed some compensation for that injury to which Muslims assigned a value, just as he did for a serious wound that lays bare the bone.

678 “That is a reason,” he said. A reason, I said, that the hadith-report itself does not explain as being the basis for his ruling, so it is not valid to say that it was. Whoever so claims holds that compensation should be paid to the woman, not to the man, to the mother, not to the father, because the tort was committed against her. No ruling can be made suggesting that the fetus has heirs, since whoever cannot inherit cannot have heirs. “Is that opinion right?” he asked. God knows best, I replied.

679 “If that is not a good reason, then what does one say about this ruling?” he asked. One should say, we replied, that it is a Prophetic practice that God’s servants are obligated to use for their rulings. “But what should one say in the case of other rulings where the report indicates the reason that the ruling was made?” he asked. One says, I answered, that it is the ruling from a Prophetic practice that they are obligated to observe because of a rationale that they know is the reason why they are obligated to observe it—as part of Prophetic Practice. They can then, in turn, base an analogy on it for cases in which a similar rationale is operative.

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680 “Mention another case,” he requested, “different from this, if you have one that includes something one can use as a basis for an analogy and something that may not be so used.” So I said to him: God’s Emissary ruled, concerning camels and sheep with full udders, that if the buyer milks them, then “if he chooses to, he may keep the animal; or, he may return it together with a *ṣāʿ*-measure of dates.”⁴²⁶

He also ruled that “profit is retained because of liability for risk of loss.”

It accords with reason that the retention of profit is in exchange for bearing the risk of loss—how could it not be? If I purchase a slave and make a profit because of him, then I become aware of a defect that allows me to return him, the profit I earn while I own the slave has two characteristics. One is that it is not owned by the seller, and no portion of the purchase price is allocated to it. The other is that it came into being while the slave was in my possession, when the slave was transferred from the liability of his seller to my liability. If that slave dies, he will have died as part of my property, and subject to my ownership. If I wished, I could retain him with the defect—and the profit as well. 681

Our ruling is based on an analogy from the hadith-report “Profit is retained because of liability for risk of loss.” Anything that emanates from a walled orchard that I buy, or offspring from livestock, or the child from a female slave, is like the profit, because it comes into being as part of the property of its buyer, not as part of the property of its seller. But in regard to the animal with the full udder, our opinion follows the command of God’s Emissary, and we do not use that command as a basis for an analogy.⁴²⁷ That is because the bargain was made for the ewe in question, in which there was pent-up milk of unknowable character and value. We know with certainty that the milk of camels and sheep differs and that the milk of each individual one of those differs, as well. So when God’s Emissary ruled that a defined amount be paid in compensation—a *ṣāʿ*-measure⁴²⁸ of dates—we adopted that opinion, following the command of God’s Emissary. 682

If someone bought a ewe with a full udder, milked it, and then approved of it even after becoming aware of the defect of the pent-up milk in its udder, and then kept it for a month and milked it again, and then there appeared a defect that had been concealed by the seller, apart from the full udder, he would be entitled to return 683

it and the milk would be his, without any compensation. It would be in the nature of subsequently arising profit, since it was not the subject of the bargain. Rather, it comes into being as part of the buyer's property. It would, however, be incumbent on him to return a $\text{\$}\bar{a}'$ -measure of dates for the milk he got if he returned the animal because of the full udder, just as God's Emissary ruled. Thus, our opinion about the milk in the full udder is based on a report, and our opinion about the milk that subsequently comes into being is based on an analogy from the hadith-report "Profit is retained because of liability for risk of loss." The milk in the full udder at the time of sale is distinguishable from the milk that subsequently comes into being because it formed a part of the bargain, whereas the milk that appears later in time came into being as part of the buyer's property and was not the subject of the bargain.

684 If someone were to ask, "Is this one matter that can be understood to have two different implications?" one should reply: Yes, since it combines two, or even several, different implications.

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685 If he asks, "Can you give me a different example of that?" I would say: A woman is informed that her husband has died. She fulfills the waiting period and then remarries. The new husband consummates the marriage, and then the first husband reappears alive: she becomes entitled to the dowry, is subject to the waiting period, any children born to them are the father's, and neither is subject to penal sanction. They are then legally separated and do not inherit from each other, and the separation is an annulment of the marriage, not a divorce.

686 Because the second marriage was lawful according to appearances, one rules regarding this marriage as one does regarding an ordinary lawful marriage: there is a dowry, a waiting period, a child that is the legitimate offspring of the father, and any penal sanction is averted. However, according to the true state of affairs, one rules regarding it as one does for an unlawful marriage: the marriage is

ended, it becomes unlawful for him to have sexual intercourse with her once they know that the first husband is alive, and they may not inherit from each other as spouses otherwise would. The voiding of the contract is not a divorce, since she was never legally a spouse. There are many similar instances, like that of a woman who marries during her waiting period.



CHAPTER ON LEGAL DISAGREEMENT

“I find scholars now and in the past disagreeing about various matters. Are they allowed to do that?” he asked. Legal disagreement, I replied, is of two types. One is forbidden, but I do not say that about the other. “What is the forbidden kind of legal disagreement?” I said: It is unlawful, for those who know of it, to disagree about any text that God used to furnish binding authority in a clear and textually explicit manner, whether in His Book or through the words of His Prophet. When such things are susceptible to speculative interpretation, however, or arrived at by analogy—and the interpreter or person who analogizes arrives at a meaning that is plausible for the report or analogy in question, even if others disagree with him—I do not hold that he should be dissuaded from that as he should be if he holds an opinion contrary to a textually explicit passage.

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“Can you cite some authority,” he asked, “that clarifies how you distinguished between the two kinds of legal disagreement?” Concerning the censure of division, I replied, God said, «Those who were given the Book became divided only after clear proof came to them»⁴²⁹ and he also said (sublime His praise) «Do not be like those who have become divided and disagreed after the clear proofs have come to them.»⁴³⁰ He censured disagreement about the clear proofs conveyed to them. As for those instances in which they are

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legally obligated to engage in legal interpretation, I have given you the examples of finding the prayer-direction, evaluating witnesses' testimony, and other instances.

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689 “Give me some examples,” he requested, “of things over which those early Muslims whose opinions are transmitted disagreed, in instances where God has a textually explicit ruling that is subject to speculative interpretation. Is there an indication of the correct answer in such a case?” Only rarely, I replied, did they disagree about anything without our finding something that we considered an indication from the Book of God, the Practice of God’s Emisary, or an analogy based on one or both of them. “Can you mention an example of those?” he asked. So I said, God said: «Divorced women shall wait by themselves for three menstrual cycles.»⁴³¹ ‘Āishah said: “‘Cycles’ are the periods of purity.” Zayd ibn Thābit, Ibn ‘Umar, and others held something like her opinion as well. But a small group among the Prophet’s Companions held that “cycles” are the periods of menstruation, and so they did not make the marriage of divorced women lawful until they had performed the major cleansing from menstruation three times.

690 “How did the two groups arrive at their respective conclusions?” he asked. What “cycles” have in common, I replied, is that they refer to times, and the times in this case are signs that accompany a divorced woman and that prevent her from marrying until she completes them. So those who said that “cycles” are the periods of menstruation, as far as we can tell, though God knows best, adopted the position that times are the terms with the narrowest meaning, because the “cycles” are points in time, and points in time are shorter than the interval between those times, just as the edges of an object cover a smaller area than what lies between them. Periods of menstruation are shorter than periods of purity. So linguistically, it is more appropriate that the waiting period be relative to a point in time, just as the crescent moon is a point in time that provides a division between two months.

Perhaps they adopted the view of the Prophet when he commanded that the female prisoners taken at Awtās be absolved of suspicion of pregnancy by completing a menstrual period before being made available for sexual intercourse. They would thus have taken the view that the relevant waiting period was such absolution and that such absolution should be measured as one menstrual period. Furthermore, they would have differentiated between such absolution for female slaves and for free women. Free women would be absolved after three complete menstrual periods, from which they would emerge into a state of ritual purity, just as the female slaves would do after one complete menstrual period.

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“That is one approach,” he said, “but how did you select a different approach, since the verse could, in your view, be interpreted to have either meaning?” The time when the new crescent moon is seen, I replied, is a sign that God has appointed for the months, and the crescent moon is other than night and day. Rather it is a round sum of thirty or twenty-nine days and nights, just as the crescent moon, thirty, and ten plus twenty all equate to round sums after which the sequence of numbers resumes. It has no meaning other than this. So the “cycle,” although it is a point in time, is also made up of a number of days and nights, and menstruation and the state of purity are measured according to the days and nights of the waiting period. The time in question was likened to the endpoints of that period of time, and those endpoints could possibly be both included within what bounds it and stand outside of it, but would not be separate from it, and would remain conceptually a point in time. “What does that mean?”⁴³² he asked. Menstruation, I replied, is the womb’s release of blood such that it comes out, and ritual purity is the womb’s retention of blood such that it does not come out. Purity and retention are thus the prevention of something, not its release. So if purity is a measure of time, it is linguistically more appropriate as the meaning of “cycle,” because it is the retention of blood.

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God’s Emissary commanded ‘Umar to order his son ‘Abdallāh ibn ‘Umar, who had divorced his wife while she was menstruating,

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to take her back and to sequester her until she achieved a state of purity, and then to divorce her while in a state of purity, without having had sexual intercourse with her. God's Emissary said: "That is the waiting period according to which God commanded that one divorce women." This referred, though God knows best, to His word «When you divorce women, divorce them at the end of their waiting period.»⁴³³ So God's Emissary reported that the waiting period consisted of states of purity, not menstruation.

694 God also said: «three menstrual cycles,»⁴³⁴ it being incumbent on a divorced woman to complete three menstrual cycles. If the third cycle is later than its usual time, she is not lawful until it comes or she reaches menopause, or one suspects that to be the case. In the latter case, she must wait for a period consisting of months, and there is no point to the requirement of major cleansing, because such a cleansing would mark a fourth time period, apart from the preceding three. Whoever holds that such a cleansing is incumbent on her is compelled to say that if she remains a year or more without having undertaken such a cleansing, she is not lawful to marry. Thus, the opinion of those who say that "cycles" are states of purity more closely accords with the meaning of God's Book. The Arabic language, too, is clearly in accord with those meanings, though God knows best.

695 The Prophet's command that female slaves be absolved of suspicion of pregnancy by waiting one menstrual period should be interpreted according to its apparent meaning. This is because if a state of purity precedes menstruation and then the female slave has a complete and valid menstrual period, she is absolved of the possibility of pregnancy during the ensuing period of purity. She might see some blood but that would not count as menstrual blood since menstruation is only legally relevant if it comprises a complete menstrual period. So no matter whether the state of purity was before the complete and valid menstrual period, she is *prima facie* absolved from any suspicion of pregnancy. Thus, the woman who is subject to the waiting period waits in two senses: for absolution

from suspicion of pregnancy and for another reason besides that concurrently.⁴³⁵ She has two menstrual periods, two periods of purity, and then a third period of purity. If the point had only been for her to be absolved of suspicion of pregnancy, then she would have been so absolved twice, but such absolution was required of her in addition to the obligation to wait for the sake of fulfilling a religious obligation.

. . .

“Can you give me another example of a case,” he asked, “about which they similarly disagreed?” Yes, I replied, and maybe even something that we find to be clearer. We have already discussed an instance involving an inconsistent narration of Prophetic Practice, and it provides an indication of what you have asked about and is within its scope, God willing. God said: «Divorced women shall wait by themselves for three menstrual cycles.»⁴³⁶ He also said: «With those of your women who have reached menopause, if you have doubts, their waiting period is three months; likewise the barren. For pregnant women, the period shall be until they give birth»⁴³⁷ and «Those of you who are taken in death and leave wives, the wives shall wait by themselves for four months and ten days.»⁴³⁸

One of the Companions of God’s Emissary held as follows: For pregnant divorced women, God mentioned that their waiting period should last until they give birth, and for widows, that it should be four months and ten days. Thus, the pregnant widow must wait four months and ten days, and she must also give birth in order to satisfy the two waiting periods together, since giving birth does not, according to an explicit revealed text, signal the end of the waiting period except in regard to divorce. It is as though he took the position that giving birth releases her from one obligation, but that the four months and ten days remains a religious obligation to which she is subject for its own sake. No marriage may be consummated with the widow; she must complete the four months’ waiting period. She thus has two different obligations, one of which does

not lapse. It is as though she were liable to two different men for two different things, and satisfying the one liability does not cause the other one to lapse. Or it is as if she married during her waiting period and had sexual intercourse: she would still be subject to the waiting period in regard to the first man and to another waiting period for the second.⁴³⁹ Another of the Companions of God's Emissary held: If she gives birth to the child she is carrying, she becomes lawful to marry, even if her husband is still on the funeral bier.

698 Al-Shāfi'ī said: The verse could have these two different meanings simultaneously. The meaning that seems to accord best with reason is that the pregnancy's term constitutes the expiration of the waiting period. The Practice of God's Emissary indicates that giving birth ends the waiting period in cases of the husband's death, just as it constitutes the rationale in the case of divorce.

699 Sufyān reported to us from al-Zuhri, from 'Ubaydallāh ibn 'Abdallāh, from his father: Subay'ah of the Aslam tribe gave birth a few nights after her husband's death. Abū l-Sanābil ibn Ba'kak passed by her and said, "You have adorned yourself for marriage too soon; you must wait four months and ten days." Subay'ah mentioned this to God's Emissary, and he said: "Abū l-Sanābil lied," or "It is not as Abū l-Sanābil said. You are lawful, so marry!"

700 "Those who disagree with this Prophetic practice," he said, "can adduce no contrary authority at all. But mention a disagreement of theirs in which there is no textually explicit account of a Prophetic practice, but for which the Qur'an provides the indication, whether through an explicit text or one adduced through inference, or where analogical reasoning does so."

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701 I said to him: God said: «For those who forswear their women there is a wait of four months; if they return, God is Forgiving and Merciful. If they decide on divorce—God is Hearing and Knowing.»⁴⁴⁰ The majority of the Prophet's Companions whose views

are narrated hold, in our view, that if the four months pass, then the person who forswears has two options: he may either return to his wife or divorce her. It is narrated from other of the Prophet's Companions, however, that the decision to divorce is compelled by the lapsing of the four months. Nothing at all is preserved from God's Emissary (may my father and mother be his ransom) about this.

"So," he inquired, "which of the two opinions did you adopt?" I hold, I replied, that the one who forswears is not bound to divorce and that if his wife demands her rights from him, I will not broach this with him until the four months have lapsed. If the four months lapse, then I say to him, "Return or divorce!" and returning means having sexual intercourse. 702

"How," he asked, "did you choose this over the competing opinion?" In my view, I replied, it seems more like the rationale in God's Book, and better accords with reason. "What indication of it is there in God's Book?" he asked. I said: When God said "For those who forswear their women there is a wait of four months," the verse's apparent meaning is that for whomever God granted a postponement of something for four months, the person in question cannot by any means do that thing until the four months have elapsed. "But," he said, "God (mighty and sublime) granted him four months during which he could return to her, as when you say, 'I give you a period of four months to build this house, during which time you must finish it.'" 703

No one who is addressed by this would imagine that, I replied, unless the structure of the sentence somehow implied it. If someone were to say, "I give you a period of four months' delay for it," he would have given him a four-month deadline but have no recourse against him until they expired. If the builder had not finished building it during that time, then one could not impute to him the failure to build it or that he had breached his promise to finish it, as long as the four-month period had not expired. If they had elapsed, then the term "breach of promise," could be applied to him. It might be 704

true that the progress of construction would indicate that, as the end of the four months approached, he would certainly not finish it in the remaining time. In the case of returning to his wife, however, there is no indication that he might not return before the four months have expired, since sexual intercourse can occur in the blink of an eye. If things were to happen as you have stated, his situation changes until the four months elapse, and then that situation changes. Once he exits from that situation, he becomes subject to God's claim and then must either return to her or divorce her.

705 If there were not something at the end of the verse that indicates that its meaning is other than what you concluded, then that opinion would be the better of the two in regard to it, because of what I have explained, to wit, that it is the most apparent meaning. The Qur'an is interpreted according to its apparent meaning unless there is some other indication from it itself, or a Prophetic practice, or consensus, that its true meaning is other than its apparent meaning.

706 "What in the verse's sentence structure," he asked, "indicates what you have just described?" I said: When God (mighty and sublime) stated that the one who forswears has four months and then said, "If they return, God is Forgiving and Merciful. If they decide on divorce—God is Hearing and Knowing," He mentioned the two rules together, without separating them, stating that they come into force only after the four months. This is because He let him only either return or divorce, thus giving him the choice between the two, at one time; so neither option may precede its counterpart. They were both mentioned as occurring during one and the same period of time, just as one says in regard to something pledged, "Redeem it or we will sell it against your will," without separating the two. So, too, for anything in which one is given two options: "Do the one or the other," without separating the two. It is not permissible for them to be mentioned together, without being separated, as if one said: "Returning can occur during the four months that one forswears, but the decision to divorce may occur only at the expiration of the four months." In that case, the two rules would

have been mentioned together but one of the two rules would allow wide scope for action, and the other would allow little or no scope.

“So what you are saying,” he pressed, “is that if he returns before the four months are up, that constitutes ‘returning’ for these purposes?” Yes, I replied, just as I would hold that if you agreed to satisfy a liability that was due after a certain period of time before the expiry of that period, and you in fact paid it off early, you would have done the right thing by hurrying to pay it off early, before it became due by reason of the expiry of the period of time. Do you think it is a sin, I asked him, if he resolves to return every day but nevertheless does not have sexual intercourse until the four months have elapsed? “His resolve to return means nothing,” he responded, “until he actually returns, and ‘returning’ is sexual intercourse, if he is physically capable of it.” 707

If he were to have sexual intercourse, I said, but without intending to return, then he would no longer be subject to the divorce otherwise required by his forswearing, since the occurrence of sexual intercourse resolves the whole matter. “Yes.” If, I continued, he were resolved not to return, swearing every day not to return, and then had sexual intercourse just before the lapse of the four months by the blink of an eye,⁴⁴¹ he would no longer be subject to the divorce otherwise required by his forswearing—even if the sexual intercourse occurred for some purpose other than his returning to her, he would no longer be subject to such a divorce? “Yes.” 708

So, I continued, his resolve not to return has no effect, and his having sexual intercourse—for pleasure, not for the purpose of returning—if he does have sexual intercourse, does not, in our view or in yours, prevent him from ceasing to be subject to such a divorce based on forswearing? “That is as you say,” he replied. “He ceases to be subject to divorce by reason of sexual intercourse, for whatever reason it occurred.” So how, I asked, could he be resolved on returning every single day and then, once the four months have passed, the divorce becomes binding on him, when he did not intend to 709

divorce and did not even speak about it? Can anyone hold that such an opinion validly accords with reason?

710 “What,” he asked, “invalidates it from the point of view of reason?” What do you think, I inquired, of the situation when a man says to his wife, “By God, I will not come near you, ever”? Is that like when he says, “You are divorced after four months”? “What if I say ‘yes’?” he asked. And if he has sexual intercourse with her, I continued, before the four months are up? “Then, no,” he replied, “it is not like his saying ‘You are divorced after four months.’” When the person who forswears utters a vow to that effect, doing so does not constitute a divorce. Rather, it is merely an oath. So can a period of time supervene and make it into a divorce? Is it permissible for anyone who has any rational understanding at all of the source of their legal opinions to hold such a view—unless it is based on a binding report?

711 “A similar point,” he said, “could be raised against you as an objection.” How so? “You say,” he went on, “that if four months elapse, he is then confronted with two alternatives: he may return, but otherwise he is compelled to divorce her.” Not, I said, because the vow to forswear is tantamount to a divorce, but rather because it is an oath for which God has appointed a fixed time in order to spare the spouse harm. The ruling is made according to the oath,⁴⁴² since he must either return to her or divorce her. The rule comes into force with the lapse of the four months, distinct from the vow to forswear, but it creates a new situation: the person who made the vow is compelled to do whichever of the two he wishes, return or divorce. If he refuses to do either, one finds against him based on what one is capable of compelling him to do, that is, he is forcibly divorced, since one cannot have sexual intercourse on his behalf.⁴⁴³



CHAPTER ON INHERITANCE SHARES

They also disagreed concerning inheritance shares. Zayd ibn Thābit and those who followed his view held that every Qur'anic heir is awarded his or her specified share, and if something is left over and the deceased has no male agnates and no contractual heirs,⁴⁴⁴ then whatever is left over reverts to the Muslim community. It is narrated by others that any residual amount reverts to cognates and non-Qur'anic female agnates. Thus, if a man were survived by a sister only, she would inherit half the estate from him as a Qur'anic heir, and the residual amount would revert to her as a non-Qur'anic female agnate.⁴⁴⁵ 712

Someone asked me, "Why don't you let the excess amount revert to the sister?" By reason, I replied, of an inference based on the Book of God. "But where," he asked, "does God's Book indicate what you hold?" God said: «If a man perishes and has no children, but he has a sister, she receives half of what he leaves. He inherits from her if she has no children» and He said «If there are both brothers and sisters, the male gets a share equivalent to the share of two sisters.»⁴⁴⁶ God mentioned the sister by herself and (sublime His praise) allotted one-half to her, and He mentioned the brother by himself and allotted the entirety to him. He also mentioned brothers and sisters and assigned to the sister one-half of what is awarded to the brother. His ruling concerning the sister (sublime His praise), whether by herself or together with the brother, is the same, in the sense that she is not equal to the brother, and takes half of that amount of the estate that is due to him. If you were to say, in regard to a man who died and left a sister, that she gets half the estate, and I let the other half revert to her, then you would be 713

giving her the entirety by herself. But God only assigned to her one-half, whether by herself or together with another heir.

714 “I do not award her the remaining one-half as an inheritance share,” he said, “but rather, I award it to her as a residual amount.” So I said: What do you mean by “residual”? Is it something arrived at on the basis of subjective reasoning, such that you can assign it wherever you wish? So if you wished to give it to his neighbors, or to an extremely distant relative of the deceased, is that something you would be allowed to do? “That,” he replied, “is not allowed for any judge to do. Rather, I assigned it to her as a residual amount, but on the basis of her uterine relationship to the deceased.”

715 So: as an inheritance share? “What if I say that?” In that case, I said, you will have made her inherit in a way other than the way God made her inherit. “My opinion is that you can do that because God says «Some blood relations are nearer than others in God’s decree.»”⁴⁴⁷ I replied, The verse “Some blood relations are nearer than others” was revealed because people used to inherit from one another based on affiliation. Then their relationships as heirs came to be based on Islam and the emigration from Mecca to Medina, so that the Emigrants would inherit from each other, and any of their heirs who had not emigrated would not inherit, even though they were more closely related to the deceased than those who did inherit. The verse “Some blood relations are nearer than others” refers to the shares that He apportioned to them at that time.

716 “Can you mention what it is that indicates that?” he asked. The verse “Some blood relations are nearer than others in God’s decree” concerns what He apportioned to them. Is it not the case that there are, among the cognates and non-Qur’anic female agnates, some who inherit and some who do not, and that the spouse is awarded a larger share than most of the cognates and non-Qur’anic female agnates? If you award shares according to uterine relationships, then the daughter’s relationship will be the same as the son’s, and the cognates and non-Qur’anic female agnates will inherit together

and be more entitled than the spouse, who has no uterine tie to the deceased at all. Indeed, if the verse is as you characterize it, then you have contradicted it in the case we mentioned, in which the deceased is survived by his sister and contractual heirs, and she is more closely related to him. You would give the sister half and the contractual heirs half, even though they are not cognates or non-Qur'anic female agnates and receive no Qur'anic share mentioned in an explicit text from God's Book.



CHAPTER ON THE DISAGREEMENT OVER THE GRANDFATHER

They disagreed over the inheritance share of the grandfather. Zayd 717
ibn Thābit held—and this has been narrated from 'Umar, 'Uthmān,
'Alī, and Ibn Mas'ūd—that brothers of the deceased should inherit
along with him.⁴⁴⁸ Abū Bakr al-Ṣiddīq and Ibn 'Abbās held—and this
has also been narrated from 'Ā'ishah, Ibn al-Zubayr, and 'Abdallāh
ibn 'Utbah—that they put the grandfather in the position of the father
and excluded the brothers if the grandfather survived the deceased.

“How,” he asked, “did you come to confirm that both the broth- 718
ers and the grandfather should inherit if they survive the deceased?
Is this based on an indication from God's Book or a Prophetic prac-
tice?” As for something clearly stated in God's Book or an account of
Prophetic practice, I know of none. “But,” he said, “the reports are
equivocal in regard to this, and the indications arrived at by means
of analogy support the view of those who put the grandfather in the
position of a father and have him exclude the brothers.”

Where are these indications? I inquired. “I think,” he replied, 719
“that the concept 'fatherhood' applies to him, that you agree that he

excludes the mother's sons, and that you do not reduce his share to less than one-sixth. All of that applies by rule to the father."

720 We do not make him an heir, I explained, solely on the grounds of the concept of fatherhood. "How so?" I might find that the concept of "fatherhood" applies to him in some cases when he does not inherit. "When?" There might be another father, I said, in addition to him. The concept of fatherhood applies to him and also to Adam. If there is a father in addition to the grandfather, then the grandfather does not inherit. Moreover, if he is a slave, a nonbeliever, or the killer of the deceased, he does not inherit. In all these cases the concept of fatherhood applies to him, too. So if he were to inherit solely because of the concept of fatherhood, then he would inherit in those other situations, as well.

721 As for our excluding the sons of the mother,⁴⁴⁹ we do so based on a report, not by reason of fatherhood. That is, we exclude the mother's sons in favor of a remote female descendant. As for the fact that we do not reduce his share to less than one-sixth, neither do we reduce the share of the grandmother below one-sixth. We hold these positions based on fidelity to Revelation and precedent,⁴⁵⁰ not on the grounds that if the ruling concerning the grandfather agrees with that concerning the father in one sense, then it must do so in all cases. If it were the case that the ruling concerning the grandfather agreed with that for the father—for the reason that if it is the same in some instances then it must be so in all instances—then that of the remote female descendant would agree with it. Yet we exclude the mother's descendants because of her, and the ruling concerning the grandmother agrees with that of the grandfather—we do not reduce her share below one-sixth either.

722 "What authority can you cite," he asked, "to support your rejection of our opinion that the brothers are excluded by the grandfather?" The reason, I replied, is that your opinion is far removed from analogical reasoning. "To us it seemed nothing but analogical reasoning itself," he said. What do you think, then, about the grandfather and the brother? I asked. Does each of them establish his link to

the deceased through his own relationship or by means of someone else's relationship? "What do you mean?" Does the grandfather not say, "I am the father *of the father* of the deceased"? And the brother, "I am the son *of the father* of the deceased"? "Indeed, yes." So both of them establish their link through the father's relationship to the deceased, to the extent of his position with regard to that relationship? "Yes," he replied.

Then suppose that the father is the deceased, I said, and that he is survived by his son and his own father. How do they inherit from him? "His son gets five-sixths of the inheritance," he replied, "and his father gets one-sixth." If the son is more entitled⁴⁵¹ by virtue of the greater share of the inheritance from the father that is awarded to him, and the brother is descended from the father, through whom he claims a familial relation, and the grandfather is the father of the father, through whom he claims a familial relationship, as you yourself have described, then how can you exclude the grandfather? If one of them had to be excluded by the other, then the grandfather would have to be excluded by the brother, since the brother is the more worthy by virtue of the size of the inheritance shares that they receive on account of the familial relationship that each asserts. Alternatively, you could always just award the brother five-sixths and the grandfather one-sixth.

"What," he asked, "prevents you from adopting that opinion?" All those who disagree, I answered, have nevertheless reached a consensus on the view that the grandfather receives a share equal to or greater than that of the brother. I do not think one should contradict them or resort to analogizing when it leads to a position outside the total range of their opinions.

I concluded that confirming the right of both the brothers and the grandfather to inherit together is the best of the two views on the basis of the indications that analogizing furnished me, as I have described. This is especially so in conjunction with the fact that my conclusion is the opinion of most jurists in the various regions past and present. In addition, the inheritance of the brothers is affirmed

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in the Book; the grandfather has no inheritance according to the Book; and the inheritance of the brothers is better established than that of the grandfather in Prophetic Practice.



OPINIONS OF THE COMPANIONS

726 Then he said, “I have heard your opinion concerning consensus and analogizing after your opinion about rulings of the Book of God and the Practice of His Emissary. What do you think about the opinions of the Companions of God’s Emissary when they disagree with each other?” In that case, I said, we adopt the opinion that agrees with the Book, Prophetic Practice, consensus, or what makes for the most valid analogy.

727 “What do you think,” he continued, “about the case in which one of them utters an opinion and no one else is remembered to have agreed or disagreed with it? Can you cite any authority for following it—whether from a scriptural passage, a Prophetic practice, or something people have agreed on—that could serve as a justification of a kind that you could adduce as a report?”⁴⁵² We have not found, I replied, any scriptural prooftext or confirmed account of a Prophetic practice pertaining to that. We have found scholars adopting the opinion of one Companion sometimes and not adopting it at other times, and also disagreeing over some of the Companions’ opinions that they do adopt. “Which of those do you do?” he asked. I follow the opinion of a Companion, I said, if I cannot find a prooftext from scripture, a Prophetic practice, an instance of consensus, anything of similar import to the Companion’s opinion that would justify using his opinion as the basis for a ruling,⁴⁵³ or an illustration of how it could be used for analogical reasoning. Only rarely does one find that the opinion of one Companion remains unopposed by another.



THE STATUS OF CONSENSUS AND ANALOGY

“You have based rulings on the Book and Prophetic Practice,” he said. “How do you rule on the basis of consensus, and then analogies? Do you accord consensus and analogies the same status as a scriptural proof-text or a Prophetic practice?” Even if I do base rulings on them in the same way that I do using the Book and accounts of Prophetic Practice, I replied, the principle that underlies my rulings that I base on them differs. 728

“Is it permissible,” he asked, “for such bases to have differing underpinnings and yet be used in issuing the same kinds of rulings?” Yes, I answered. When one rules on the basis of the Book and widely agreed-upon instances of Prophetic Practice, concerning which there is no dispute, in such a case we say: we have ruled correctly both according to the apparent meaning and the true meaning. When one rules on the basis of an account of a Prophetic practice that has been narrated as an isolated transmission, and upon which people have not agreed, we say: we have ruled correctly, but on the basis of the apparent meaning, since it is possible for the person who related such a hadith-report to have been mistaken. We rule on the basis of consensus, and then analogies, which is weaker,⁴⁵⁴ but they are a matter of necessity, because it is not allowed to analogize if there is an extant report, just as the performance of substitute ablutions with sand when one is traveling and lacks water allows one to achieve ritual purity. Doing so does not allow one to achieve ritual purity if water is available, but rather it only does so if water is lacking. So, too, what comes after Prophetic Practice can constitute authority only if an account of his Practice is lacking. I have discussed the authorities that support reasoning by analogy above. 729

Then he said, “Can you give me an example of something that is like this?” Yes, I said. I rule against someone on the basis of personal knowledge that what is alleged against him is as alleged, or I rule on the basis of his admission against interest. If I have no such knowledge, or he makes no such admission, then I would rule against him on the basis of the testimony of two witnesses, even though they might be mistaken or speculating. My personal knowledge and his own admission are stronger evidence against him than the testimony of the two witnesses. I might also rule against him on the basis of the testimony of one witness and an oath, and that is weaker than the testimony of the two witnesses. Then I might rule against him on the grounds of his refusal to take an oath in combination with the oath of his accuser. That is weaker still than the testimony of the one witness and the oath, because he might decline to take the oath out of fear of notoriety, or because he considers the matter regarding which he is asked to swear unimportant, even though the other party, who swears in his own favor, might be untrustworthy, greedy, and a sinner.

End of the Book *The Epistle*

Praise Be to God and May God Bless Muḥammad

NOTES

- 1 Q An'ām 6:1.
- 2 Possibly there is an implicit criticism here of the speculative concern with the nature of God's attributes in some currents of early Islamic theology. See Makdisi, "Juridical Theology," 41, and Watt, *Islamic Creeds*, 15–16.
- 3 Q Āl 'Imrān 3:78.
- 4 Q Baqarah 2:79.
- 5 Q Tawbah 9:30–31.
- 6 Q Nisā' 4:51–52.
- 7 Q Zukhruf 43:23.
- 8 Q Nūḥ 71:23–24. I have quoted slightly more of the Qur'an here than is found in either edition.
- 9 Q Maryam 19:41–42.
- 10 Q Shu'arā' 26:69–73.
- 11 Q Āl 'Imrān 3:103.
- 12 Possibly this phrase refers more specifically to God's predetermination of the revelation of the Qur'an. For a less theologically charged use of same underlying Arabic phrase, see para. 526.
- 13 Q Baqarah 2:213.
- 14 Q Tawbah 9:128.
- 15 Q Shūrā 42:7. The "mother of towns" is Mecca.
- 16 Q Shu'arā' 26:214.
- 17 Q Zukhruf 43:44.
- 18 Q Shu'arā' 26:214.
- 19 Q Sharḥ 94:4.

- 20 This is a *ḥadīth qudsī*, a hadith-report in which an extra-Qur’anic divine saying occurs, rather than a saying or deed of Muḥammad. See Graham, *Divine Word*.
- 21 Q Āl ‘Imrān 3:110.
- 22 Q Fuṣṣilat 41:41–42.
- 23 Q Āl ‘Imrān 3:30. I have quoted slightly more of the Qur’an here than is found in either edition.
- 24 This seems to be a predestinarian slogan. See Watt, *Islamic Creeds*, 16–18, 51 (art. 17).
- 25 Q Āl ‘Imrān 3:110.
- 26 Q Ibrāhīm 14:1.
- 27 Q Naḥl 16:44.
- 28 Q Naḥl 16:89.
- 29 Q Shūrā 42:52.
- 30 A reference to Q An‘ām 6:151.
- 31 The several Qur’anic verses to which he here refers are discussed in various places below.
- 32 Q Muḥammad 47:31.
- 33 Q Āl ‘Imrān 3:154.
- 34 Q A’rāf 7:129.
- 35 Q Baqarah 2:144.
- 36 Q Baqarah 2:150.
- 37 Q An‘ām 6:97.
- 38 Q Naḥl 16:16.
- 39 Q Qiyāmah 75:36.
- 40 This and the preceding paragraph contain a brief reference to three legal problems that require jurists to make inferences. They are introduced more fully below at paras. 42–49 and discussed in depth at paras. 593–611.
- 41 Q Baqarah 2:196. The Minor Pilgrimage to Mecca is the *‘umrah*, and the Major Pilgrimage to Mecca is the *ḥajj*. I use “Minor” and “Major” to distinguish them when they are discussed together, but otherwise the term “Pilgrimage” refers to the *ḥajj*.
- 42 Q A’rāf 7:142.

- 43 Q Baqarah 2:183–4.
- 44 Q Baqarah 2:185.
- 45 Q Mā'idah 5:6.
- 46 Q Nisā' 4:43.
- 47 Stones may be used to wipe away excrement from the anus after defecation. See, e.g., Ibn Naqīb al-Miṣrī, *Reliance of the Traveller*, 78. In general, however, Islamic law imposes two levels of ritual cleansing: ablutions, which are a pre-prayer washing, and a more complete washing that is, in general, necessitated by sexual activity and menstruation.
- 48 Q Nisā' 4:11.
- 49 Q Nisā' 4:12.
- 50 See below, paras. 178–80.
- 51 Q Nisā' 4:103.
- 52 Q Baqarah 2:43.
- 53 Q Baqarah 2:196.
- 54 Al-Shāfi'ī here foreshadows an exegetical argument that the term “wisdom” in the Qur'an (*ḥikmah*) means Prophetic Practice (*sunnah*). See paras. 100–101, 121, and 123 below.
- 55 Q Anbiyā' 21:23.
- 56 Q Baqarah 2:150. Although used as a preposition (strictly, as an adverb of place), the Arabic word *shaṭra*, which is discussed in the following paragraphs, is in fact a noun that means the “half” or “side” of something.
- 57 Q An'ām 6:97.
- 58 Q Naḥl 16:16.
- 59 Q Ṭalāq 65:2.
- 60 Q Baqarah 2:282.
- 61 I.e., while making the Pilgrimage.
- 62 Q Mā'idah 5:95.
- 63 See paras. 434–47 below.
- 64 Q Ibrāhīm 14:4.
- 65 Q Shu'arā' 26:192–5.
- 66 Q Ra'd 13:37.
- 67 Q Shūrā 42:7.

- 68 Q Zukhruf 43:1–3.
- 69 Q Zumar 39:28.
- 70 Q Naḥl 16:103.
- 71 Q Fuṣṣilat 41:44.
- 72 Q Tawbah 9:128.
- 73 Q Jumu‘ah 62:2.
- 74 Q Zukhruf 43:44.
- 75 Q Shu‘arā’ 26:214.
- 76 Q Shūrā 42:7.
- 77 On the prayer-formula, see below, paras. 325–34.
- 78 I.e., Muslims should actually be able to say these things in Arabic.
- 79 I.e., the Kaaba in Mecca.
- 80 Q Zumar 39:62.
- 81 Q Ibrāhīm 14:32.
- 82 Q Hūd 11:6.
- 83 Q Hūd 11:6.
- 84 Q Tawbah 9:120.
- 85 Q Nisā’ 4:75.
- 86 Q Kahf 18:77.
- 87 Q Ḥujurāt 49:13.
- 88 Q Baqarah 2:183–4.
- 89 Q Nisā’ 4:103.
- 90 Q Āl ‘Imrān 3:173. The point of this discussion is that the phrase “the people” often refers to specific subsets of people rather than all people in general—this is the essence of the hermeneutical distinction between restricted and unrestricted passages. The Qur’anic passage refers to the Battle of Uḥud; those who gathered against Muḥammad and his followers were the Meccans who had fought at Uḥud.
- 91 Q Ḥajj 22:73. The verse pokes fun at the impotence of the pagan deities.
- 92 Q Baqarah 2:199. The verse under discussion contains an instruction for performing the Pilgrimage.
- 93 Q Baqarah 2:24. I.e., Hellfire.
- 94 Q Anbiyā’ 21:101.
- 95 Q A’rāf 7:163.

- 96 Q Anbiyā' 21:11–12.
- 97 Q Yūsuf 12:81–82.
- 98 Q Nisā' 4:11.
- 99 Q Nisā' 4:12.
- 100 Q Nisā' 4:11.
- 101 The “heirs” are only those persons named in the Qur’an as receiving shares, or who receive residual amounts in the absence of named heirs. All inheritance shares in the Islamic law of succession are so-called forced shares, and their proportions may not be altered by the testator. No heir may receive a bequest, and bequests may not total more than one-third of the estate. See generally Coulson, *Succession*.
- 102 Although al-Shāfi‘ī speaks of the “people’s consensus,” he really means consensus achieved by the jurists.
- 103 Q Mā'idah 5:6.
- 104 The dominant interpretation of this verse is that the feet should be washed, but the more grammatically natural reading, which he here partly accommodates, is that the feet be wiped. On the interpretation of this verse, see Katz, *Body of Text*, 32–46.
- 105 Q Mā'idah 5:38.
- 106 Q Nūr 24:2.
- 107 Q Nisā' 4:25. On the term “safeguarded,” see below, paras. 168–71 and paras. 183–4.
- 108 Q Anfāl 8:41.
- 109 On account of their displeasure at Muḥammad’s activities, ca. AD 616 the tribe of Quraysh imposed a boycott on the clans to which Muḥammad belonged, those of Hāshim and al-Muṭṭalib (the latter a subclan of Hāshim). The clans retreated to their quarter of Mecca, a small ravine (*shī'b*), and the boycott ultimately failed. All the clans mentioned in this discussion are subgroups of the tribe of Quraysh, to which Muḥammad belonged and which dominated Mecca.
- 110 Q Anfāl 8:41.
- 111 Q Nisā' 4:171.
- 112 Q Nūr 24:62.
- 113 Q Baqarah 2:129. Abraham is speaking in this passage.

- 114 Q Baqarah 2:151.
- 115 Q Āl ‘Imrān 3:164.
- 116 Q Jumu‘ah 62:2.
- 117 Q Baqarah 2:231.
- 118 Q Nisā’ 4:113.
- 119 Q Aḥzāb 33:34.
- 120 Q Aḥzāb 33:36.
- 121 Q Nisā’ 4:59.
- 122 Q Nisā’ 4:69.
- 123 Q Anfāl 8:20.
- 124 Q Fatḥ 48:10.
- 125 Q Nisā’ 4:80.
- 126 Q Nisā’ 4:65.
- 127 Q Nūr 24:63.
- 128 Q Nūr 24:48–52.
- 129 Q Aḥzāb 33:1–2.
- 130 Q An‘ām 6:106.
- 131 Q Jāthiyah 45:18.
- 132 Q Mā’idah 5:67.
- 133 Q Shūrā 42:52.
- 134 Q Nisā’ 4:113.
- 135 Q Shūrā 42:52–53.
- 136 Q Nisā’ 4:29.
- 137 Q Baqarah 2:275.
- 138 See above, paras. 117 and 122.
- 139 This paragraph offers a relatively tidy summary of the *Epistle’s* contents.
- 140 Q Ra’d 13:41. The first half of this verse is used as a predestinarian slogan again at paras. 264 and 589.
- 141 Q Naḥl 16:89.
- 142 Q Yūnus 10:15.
- 143 Q Ra’d 13:39.
- 144 The more common recension has “abrogate or cause to be forgotten.” That al-Shāfi‘ī has adopted a different recension, that of Ibn Kathīr

- (d. 120/738), is clear from his use of the word “delay” later in this paragraph. *Risālah*, ed. ‘Abd al-Muṭṭalib, 45, n. 4. On the recensions of the Qur’an, see Frederik Leemhuis, “Readings of the Qur’an,” in *Encyclopaedia of the Qur’an*, 4:353–63.
- 145 Q Baqarah 2:106.
- 146 Q Naḥl 16:101.
- 147 Q Baqarah 2:275.
- 148 Q Nūr 24:2.
- 149 The reference is to Q Mā’idah 5:6: «O you who believe, when you rise to pray, wash your faces and your hands up to the elbows, and wipe your heads and wash your feet up to the ankles.»
- 150 Q Mā’idah 5:38.
- 151 Q Muzzammil 73:1–4.
- 152 Q Muzzammil 73:20.
- 153 Q Isrā’ 17:79.
- 154 I.e., he suggests that Q Isrā’ 17:79 (the night vigil) may have abrogated Muzzammil 73:20 (recite only as much as you are able), but that 17:79 may itself be optional, so that it cannot be the statutory basis for the mandatory prayers.
- 155 Q Baqarah 2:222.
- 156 I.e., satisfying a ritual obligation at a time subsequent to when it was required.
- 157 Q Nisā’ 4:43.
- 158 Abrogation plays a minor role in this problem, which seems more concerned with the analogy or disanalogy between different persons who are precluded from performing a valid prayer. Unusually for the *Epistle*, the problem seems to sit uneasily in the chapter in which it appears.
- 159 Q Baqarah 2:144.
- 160 Q Baqarah 2:142.
- 161 The battle occurred in 2/624.
- 162 Q Baqarah 2:239.
- 163 The raid occurred in 3/624. One infers that he was facing other than the prayer-direction.

- 164 Q Anfāl 8:65.
- 165 Q Anfāl 8:66.
- 166 Q Nisā’ 4:15–16.
- 167 Q Nūr 24:2.
- 168 I.e., from the tribe of Aslam.
- 169 Q Nisā’ 4:25. Jones has “If they commit indecency when they are properly married [*uḥṣinna*] they shall incur half the punishment of chaste women [*muḥṣanāt*].” Al-Shāfi’ī wants *uḥṣinna* to mean “conversion to Islam” and *muḥṣanāt* to mean “married.” The two terms are very closely etymologically related. I have translated these terms with the word “safeguard” to reduce them to their lowest common semantic denominator, as it were, in order to show how al-Shāfi’ī’s argument is at least plausible with reference to the Arabic.
- 170 He is referring here to the first half of Q Nisā’ 4:25, which he quoted above.
- 171 Q Anbiyā’ 21:80.
- 172 Q Ḥaṣhr 59:14. The Arabic words that I translate here as “guard” (*tuḥṣin*) and “well-guarded” (*muḥaṣṣanah*) are etymologically related to the terms I am translating as “safeguard(ed)” elsewhere: *muḥṣan*, *uḥṣinna*, and *iḥṣān*. Jones has “protect” and “fortified,” respectively.
- 173 Again, in the first half of Q Nisā’ 4:25.
- 174 Q Baqarah 2:180.
- 175 Q Baqarah 2:240.
- 176 In Q Nisā’ 4:11–12. The general rule is that heirs, who are defined in 11–12, may not receive bequests.
- 177 That is, its record of transmission is incomplete, not the hadith-report’s text.
- 178 I.e., for kinsmen who receive no Qur’anicly stipulated inheritance share.
- 179 It should be noted that in practice slaves were permitted to buy their freedom by means of installment contracts, an arrangement called *mukātabah*. In this instance, granting the slave the ability to work off his servitude, an arrangement referred to as *istis’ā’*, could infringe the heirs’ right to their shares of the deceased’s legacy (which includes the

- slave), which is why al-Shāfi‘ī says that the hadith-report in question makes it illegal.
- 180 No such work of al-Shāfi‘ī is known to have survived.
- 181 Q Nūr 24:4. Jones translates: “Those who accuse chaste women . . .” See note 169 to para. 168 above.
- 182 Q Nūr 24:6–9.
- 183 This is a reference to a hadith-report that illustrates how the oath-swearing absolves spouses of liability for unsupported accusations of adultery. The baby’s resemblance to the putative adulterer would have been strong circumstantial evidence that adultery had occurred, though it should be said that it would not have been strong enough for a conviction for unlawful sexual intercourse under Islamic law. The point is that the safe-harbor rules for interspousal accusations of adultery preclude the application of the penal sanctions otherwise provided for at Q Nūr 24:4 and in the relevant hadith-reports. See paras. 163–71 above.
- 184 Q Baqarah 2:183–5.
- 185 Q Baqarah 2:185.
- 186 In light of the upcoming discussion, this sentence must refer to situations in which the primary statutory authority for a given obligation is expressed only in general terms in the Qur’an.
- 187 Q Baqarah 2:230. A valid divorce under Islamic law requires that the husband say “you are divorced” or words to that effect three times to his wife. The divorce is revocable until the third pronouncement is uttered.
- 188 Literally, “He has only the like of the fringe of a garment.” This seems to refer to some kind of erectile dysfunction. *Risālah*, ed. Shākir, 161, n. 3.
- 189 I.e., that of the new husband, ‘Abd al-Raḥmān ibn al-Zabīr.
- 190 Q Mā’idah 5:6.
- 191 Q Nisā’ 4:43.
- 192 Arabic *rak’ah* (sg.) refers not only to bowing down during ritual prayer, but in fact to a whole cycle or unit of the prayer that comprises sequenced bowing, prostration, and sitting up, repeated a set

number of times depending on which prayer is being performed. I use “bowing” and “bowings” as shorthand for this sequence.

193 Q Nisā’ 4:176.

194 Q Nisā’ 4:7.

195 Q Nisā’ 4:11–12.

196 Q Nisā’ 4:12.

197 Q Nisā’ 4:29.

198 Q Baqarah 2:275.

199 Q Nisā’ 4:103.

200 Q Baqarah 2:43.

201 Q Tawbah 9:103.

202 Q Āl ‘Imrān 3:97.

203 Muslims end the required prayers by saying “Peace be upon you and God’s mercy” twice. “Peace be upon you” (*al-salām ‘alaykum*) is also a greeting.

204 Q Nisā’ 4:103.

205 The Battle of the Parties (*yawm al-aḥzāb*) refers to the siege of Medina in 5/627. The “parties” were those allied forces—Meccans, a Jewish tribe, and a north Arabian tribe—who unsuccessfully laid the siege and after whom Sura 33 of the Qur’an (al-Aḥzāb) is named. The battle is more commonly known as the Battle of the Trench (*yawm al-khandaq*) because of the defensive trench dug by Muḥammad and his followers.

206 See the preceding note to para. 219.

207 Q Aḥzāb 33:25.

208 Q Baqarah 2:239.

209 Q Nisā’ 4:101.

210 Q Nisā’ 4:102.

211 Strictly, the hadith-report in question is identified as being *marfū‘*, that is, as having had its chain of transmitters (*isnād*) mistakenly extended back to the Prophet.

212 Q Baqarah 2:43.

213 Q Nisā’ 4:162.

214 Q Mā‘ūn 107:4–7.

- 215 Q Tawbah 9:103.
- 216 Although I have looked carefully at my predecessors' notes and the usual dictionaries, there is an element of conjecture in the renderings of the various taxable and nontaxable items mentioned in the following paragraphs.
- 217 Under *asbiyūsh*, Dozy (*Supplément*, 1:20) directs one to the Arabic term *asfiyūsh* as cited in Smith, *Thesaurus*, 1:1159, where this meaning is found (my vowelizing is conjectural).
- 218 *Yāqūt* and *zabarjad*. It may be that other gemstones are meant, possibly hyacinth and chrysoberyl.
- 219 The phrase used here (*māl al-khāṣṣah*) could mean that they are the kind of thing owned by the elite or that they are a special class of property.
- 220 Q An'ām 6:141.
- 221 Arabic *talbiyah*, which means "to say *labbayka*," a word that means something like "Here I am O Lord, at your service."
- 222 "Casting stones" refers to an activity undertaken during the Pilgrimage in the town of Minā (see the Glossary) that is interpreted as casting stones at the Devil.
- 223 Q Baqarah 2:234.
- 224 Q Baqarah 2:228.
- 225 Q Ṭalāq 65:4.
- 226 Q Nisā' 4:23–24.
- 227 Q An'ām 6:145.
- 228 Q Baqarah 2:234.
- 229 In this key paragraph, al-Shāfi'ī allows his interlocutor to set out a remarkably forthright and extensive list of criticisms of al-Shāfi'ī's approaches to hermeneutical problems that are tackled in the *Epistle*.
- 230 This *Epistle*, presumably, in paras. 126–82.
- 231 That is, by scrutinizing the transmission of hadith-reports. See below, paras. 448–567.
- 232 A reference to Q Ra'd 13:41.
- 233 This seems to mean that Prophetic Practice sometimes indicates the rationale behind Qur'anic legislation and other times provides the

- rationale for legislation independently of the Qur'an, in situations where there is no apposite proof-text in the Qur'an. Such underlying rationales must be identified before one can analogize to the new case.
- 234 Apart from this phrase ("God's Emissary"), this paragraph uses "he" in a way that could refer either to God or to Muḥammad. I have supplied "God" and "He" when it seemed appropriate, but my choices are somewhat conjectural. The overall hermeneutical point is more or less the same however one interprets the pronouns.
- 235 The question could also mean, "Is it possible that Prophetic Practice functions differently than the Book in regard to abrogation?"
- 236 Even though, according to al-Shāfi'i, the Qur'an and Prophetic Practice cannot abrogate each other, Prophetic Practice often provides indirect evidence that the Qur'an has been abrogated. Unlike al-Shāfi'i, most later Sunni jurists allowed intersource abrogation under certain conditions.
- 237 Al-Shāfi'i seems to say here that apparently restricted texts in the Qur'an are sometimes shown by an account of a given practice to be intended as *unrestricted*. However, al-Shāfi'i's earlier discussion of restricted and unrestricted texts (paras. 72–97) suggests that Prophetic Practice always shows that apparently *unrestricted* Qur'anic texts are intended as restricted.
- 238 This seems to refer to the immediately preceding section on general Qur'anic obligations that have their details supplied by Prophetic Practice, paras. 183–255.
- 239 Q Mā'idah 5:38.
- 240 Q Nūr 24:2.
- 241 Presumably a reference to this *Epistle*.
- 242 Q Nisā' 4:23–24.
- 243 Q Mā'idah 5:6.
- 244 Q An'ām 6:145.
- 245 Q A'rāf 7:157.
- 246 Q Baqarah 2:275.
- 247 Q Nisā' 4:29.
- 248 Q Baqarah 2:275.

- 249 Q Nisā' 4:24.
- 250 Q Mā'idah 5:38.
- 251 Q Nūr 24:2.
- 252 Q Baqarah 2:275.
- 253 It is grammatically possible that the interlocutor is the utterer of the last two sentences in this paragraph, but the polemical fervor of the passage leads me (and Shākir and 'Abd al-Muṭṭalib) to think that the author is expressing his own views.
- 254 The festival marking the end of the fast of Ramadan, now in English often known as "Eid" (Arabic *īd*).
- 255 I.e., the underlying policy was that people should keep enough for three days and then give the rest to those Bedouin as an act of charity.
- 256 He transmits the hadith-report that prohibits consumption of the meat of sacrifices after three days. See above, para. 288.
- 257 Q Aḥzāb 33:25.
- 258 Q Baqarah 2:239.
- 259 Certain of the five prayers may be combined during travel.
- 260 According to 'Abd al-Muṭṭalib, a reference to the relevant chapter of the *Kitāb al-Umm. Risālah*, ed. 'Abd al-Muṭṭalib, 107, n. 8.
- 261 Q Nisā' 4:15–16.
- 262 Q Nūr 24:2.
- 263 Q Nisā' 4:25.
- 264 Q Nūr 24:2.
- 265 According to Shākir, Jābir ibn Yazīd al-Ju'fī (d. ca. 128/745), an important early Shi'i figure active in Kufa. *Risālah*, ed. Shākir, 256, n. 3.
- 266 Whether the work referred to here is identical with the *Rulings of the Qur'an* referred to above in para. 181 is unclear.
- 267 In other words, the two groups each had one bowing remaining that they completed together.
- 268 Q Nisā' 4:102.
- 269 Q Nisā' 4:103.
- 270 This series of phrases, called the *tashahhud* ("the witnessing"), is uttered during prayer and is distinct from the *shahādah* ("There is no god but God and Muḥammad is His Prophet."), the uttering of which

is considered a sign of conversion to Islam. However, the *tashahhud* also includes those words from the *shahādah*, as emerges from the discussion below.

271 Q 25, Sūrat al-Furqān.

272 “So recite of it what you are able” is a reference to Q Muzzammil 73:20. See above, paras. 138–43.

273 Q Baqarah 2:238.

274 Q Baqarah 2:238.

275 Literally, “the wolf’s tail.”

276 The first Minor Pilgrimage referred to here took place in 6/628, but was not completed, even though the attempt led to the treaty of al-Ḥudaybiyyah. It was successfully performed in the following year.

277 Q Nisā’ 4:92.

278 *Al-nās ‘ummāl anfusihim*.

279 Literally, “of his brother,” i.e., of another suitor. The term “brother” is used here and in the two hadith-reports that formally resemble this one and that appear in the next discussion, which concerns sales law. “Brother” has the connotation of “brother in religion” or “fellow Muslim,” a connotation that is simply assumed in this discussion but potentially more significant in the context of sales law.

280 Meaning, according to Shākir, either that he travels frequently or beats his wives. *Risālah*, ed. Shākir, 310, n. 2.

281 See note 179 to para. 376 above.

282 The point of this discussion seems to be that no such overbidding or offers to sell may be made between the time when the terms of the contract are agreed and when they become binding. This interval, during which either party may rescind, is referred to in Islamic law as the *khiyār al-majlis*, “the option that expires with the negotiating session.” Although two of the hadith-reports in this discussion bear a very close formal resemblance to the hadith-report in the preceding discussion about competing marriage proposals, the rules governing supervening offers in sales and marriage proposals differ. Competing proposals are not allowed after one proposal has been accepted, but competing

- offers to buy or sell are allowed precisely after a contract has become binding. ‘Abd al-Muṭṭalib identifies two different incidents involving the Prophet and overbidding, both preserved as hadith-reports, but is unable to decide which is intended here. *Risālah*, ed. ‘Abd al-Muṭṭalib, 144, *ḥadīth* 102 (margin).
- 283 “Late afternoon” and “dawn” are also the names of two of the five specific required prayers, *‘aṣr* and *ṣubḥ*, respectively (the more common term for the dawn prayer is *fajr*). I translate *‘aṣr* as “afternoon prayer” below, where it clearly refers to the prayer at that time, not to the time alone, and *ṣubḥ* as “dawn prayer.”
- 284 “In both senses,” that is, according to both its apparent sense and its true or objectively correct meaning. Where the objectively correct meaning is impossible to discover, the apparent meaning suffices; where it is discoverable, it aligns with the apparent meaning.
- 285 That is, they seem to be unlawful according to the hadith-reports cited at the beginning of this discussion.
- 286 Q Ṭā Hā 20:14.
- 287 Possibly, “to relieve himself.”
- 288 Both Mālik ibn Anas and al-Shaybānī understand ‘Umar’s actions as a binding precedent, but the certain “associate” is most likely Mālik. See Mālik, *Muwattaʿ*, recension of al-Laythī, 1:368–9 and *Muwattaʿ*, recension of al-Shaybānī, 149–50.
- 289 See above, paras. 288–94.
- 290 The Arabic has the singular *‘arīyah*, but I am using the plural *‘arāyā* here and in para. 425 since the plural is used in the technical name for the sale discussed here (*bayʿ al-‘arāyā*, the *‘arāyā*-sale). For a fuller explanation of this sale, which is an exception to the rules against usurious transactions, see paras. 669–70.
- 291 The term “known” in this and upcoming discussions of sales law could be rendered as “specified” or “defined.”
- 292 Presumably these are the same two reasons that are given earlier in the paragraph: the fact that it is an inherently unequal exchange of the same type of food, and also that it is the exchange of a known for an unknown amount.

- 293 That is, either the *‘arāyā*-sale is an exception to the rule against the exchange of moist for dried dates, or it was never meant to be included in that rule, which is formulated in unrestricted terms and thus appears to apply to it but does not, since Prophetic Practice shows the rule to be restricted in scope.
- 294 The narrator changes here from first to third person.
- 295 In other words, as al-Shāfi‘ī has memorized the hadith-report, advance payment must involve a stipulation of volume, weight, and time, but in the alternative formulation preserved by others, such advance payment must involve *either* stipulation of volume and weight *or* stipulation of the time. The general doctrinal problem, which is the same whichever of the two formulations one adopts, is that sellers seem to be prohibited from selling what is not immediately available for delivery, but buyers seem to be allowed to make advance payments for such items, subject to certain restrictions—it is thus a problem involving the harmonization of apparently contradictory hadith-reports.
- 296 According to Shākir, al-Shāfi‘ī refers in the preceding sentence to Q Baqarah 2:236; the other discussion is found in the *Kitāb al-Umm. Risālah*, ed. Shākir, 345, n. 2.
- 297 See Q Nisā’ 4:3, 23, and above, paras. 245–8 and paras. 278–80.
- 298 The *shighār*-marriage is a pre-Islamic practice, outlawed under Islamic law, in which a father agrees to marry one daughter into another family in exchange for allowing the other family to marry a daughter into his family, whereby the exchange of daughters substitutes for both dowries that would otherwise accompany them. *Mut‘ah*-marriage is a marriage for a fixed term, in exchange for payment. It was outlawed by Sunnis but not by Shi‘a.
- 299 According to Shākir, in the *Ikhtilāf al-ḥadīth* and the *Kitāb al-Umm. Risālah*, ed. Shākir, 348, n. 2.
- 300 One is supposed to ask one’s companion before eating two dates at once, so it is a matter of etiquette, though the hadith-report in question is said also to have been uttered in regard to times of famine. The other rule regarding dates perhaps has to do with squeezing the date, but it is opposed by another hadith-report that legitimizes squeezing

old dates in order to see if there are worms in them. *Risālah*, ed. Shākir, 350, n. 8.

- 301 Possibly, “if what surrounded it had already been eaten” (by others).
- 302 His use of the term “rationale” (*ma'nā*) suggests that he is referring to analogical reasoning based on the preceding items.
- 303 Under Islamic law, some duties are collective duties which only a sufficient number of Muslims must perform (*fard kifāyah*) and other duties are incumbent on every single individual, all other things being equal (*fard 'ayn*). The idea here is that religious scholarship is a collective duty, as are several other obligations to which it is analogized below.
- 304 Q Tawbah 9:111.
- 305 Q Tawbah 9:36. That is, fight the pagans in the sacred months, when warfare was otherwise outlawed.
- 306 Q Tawbah 9:5.
- 307 Q Tawbah 9:29.
- 308 Q Tawbah 9:39.
- 309 Q Tawbah 9:41. That is, go out lightly and heavily armed.
- 310 “Holding back” is a reference to Q Tawbah 9:120, «It is not for the people of Medina and the Bedouin Arabs around them to hold back.»
- 311 Q Nisā' 4:95.
- 312 Q Tawbah 9:122.
- 313 Q Tawbah 9:39.
- 314 Q Nisā' 4:86.
- 315 In the hypothetical, the four witnesses testify about the evidence given by the other two witnesses, not about their credibility.
- 316 Again, he is distinguishing between testifying about the evidence that someone gives and testifying about the credibility of the person giving the evidence.
- 317 Probably he means that the two phrases are equivalent for scholars who evaluate chains of transmission, but it could also mean that the people who transmit use these two phrases indiscriminately.
- 318 Failure to produce four witnesses in support of a charge of unlawful sexual intercourse incurs a penal sanction of eighty lashes. See Q Nūr 24:4 and paras. 183–6 above and para. 583 below.

- 319 In other words, just as different numbers of witnesses may, depending on the kind of case, validly give evidence, different configurations of transmitters may validly supply hadith-reports.
- 320 In other words, his testimony would not be accepted in a matter in which he or a close family member stood to benefit. However, he might testify in a way that benefited a close associate and, because the relationship between the witness and that associate is not publicly known, the way a filial relationship would be, the testimony in the latter case might well be accepted.
- 321 Rancillac understands this hadith-report to mean that one may say all kinds of things about the Jews, but one must be strictly veracious about the Prophet. *La zè partie*, 147–48. In the following discussion, al-Shāfi‘ī insists that veracity is required in both cases, but that the requirement is more strict in the case of hadith-reports from the Prophet.
- 322 Presumably he is referring to the discussion of the legislative statement and the associated hermeneutic techniques, at paras. 17–255.
- 323 This must be an interjection by ‘Amr ibn Dīnār, reporting explanatory remarks of ‘Amr ibn ‘Abdallāh ibn Ṣafwān, who was possibly present during the events described.
- 324 Sura 9, alternatively entitled al-Tawbah, “Repentance.”
- 325 I.e., the day during the Pilgrimage when the binding of Ishmael is commemorated, not the Festival of the Sacrifice that marks the end of the Ramadan fast.
- 326 Rancillac rightly characterizes the preceding hypothetical as “particulièrement difficile et obscur.” *La zè partie*, 157. I think what al-Shāfi‘ī means, however, is that if a judge becomes a witness in another case, then he is subject to the same rules as other witnesses and so must have other witnesses there to testify to his own credibility. These characteristics make the judge (qua witness) like a transmitter of hadith-reports, whose credibility must be established.
- 327 Muḥammad sent the prominent Medinese Ally ‘Amr ibn Ḥazm to be his governor in Najrān (in modern southwest Saudi Arabia, but at the time considered to be part of Yemen). The letter of appointment as

preserved in historical sources briefly touches on several legal topics, but it does not discuss tort liability for lost fingers or contain the apparent quotation given here by al-Shāfi‘ī. See Ṭabarī, *Last Years*, 85–87; and Guillaume, trans., *Life*, 646–48. However, the section of the letter on tort liability is quoted or paraphrased, by itself, by Mālik ibn Anas at the outset of his discussion of tort law. Mālik, *Muwaṭṭa’*, 2:849. Al-Shāfi‘ī also quotes it in “Kitāb Diyāt al-khaṭa’,” in *Kitāb al-Umm*, ed. ‘Abd al-Muṭṭalib, 7:290–91.

- 328 This seems to be addressed to the interlocutor.
- 329 Since this hadith-report does not occur elsewhere in the *Risālah*, this is presumably a reference to the *Kitāb al-Umm*. See *Risālah*, ed. Shākir, 426, n. 4.
- 330 This refers to a military expedition to Syria in the year 18/639. ‘Abd al-Raḥmān ibn ‘Awf related a hadith-report to then caliph ‘Umar to the effect that one should not enter or leave a country where there is an outbreak of plague.
- 331 Q Tawbah 9:29.
- 332 Likely a reference to Q Faṭḥ 48:16, «You will be summoned against a people of great might, whom you will fight or they will surrender.»
- 333 Arabic *tawātarat*. The participle and verbal noun derived from this word, *mutawātir* and *tawātur*, became the standard terms for characterizing hadith-reports whose transmission occupied the other end of the spectrum from the uncorroborated report, denoting a hadith-report’s quality of having multiple points of origin for its chain of transmission among the Companions.
- 334 This refers to a hadith-report reported by Abū Mūsā l-Ash ‘arī to ‘Umar concerning the proper etiquette for asking permission to enter a room (*isti’dhān*) and for which ‘Umar demanded corroboration. See Mālik, *Muwaṭṭa’*, 2:964.
- 335 Q Nūḥ 71:1.
- 336 Q Hūd 11:25.
- 337 Q Nisā’ 4:163.
- 338 Q A’rāf 7:65.
- 339 Q A’rāf 7:73.

- 340 Q A'rāf 7:85.
- 341 Q Shu'arā' 26:160–3.
- 342 Q Nisā' 4:163.
- 343 Q Āl 'Imrān 3:144.
- 344 Q Yā Sin 36:13–15.
- 345 *Hattā yablugh al-kitāb ajalahu*. I take this to be a reference to the waiting period for widows that must be observed (*'iddah*) (see, e.g., the discussion at paras. 243–4). A similar phrase occurs in para. 6, and there I understood it as a predestinarian idea. Possibly the reference in para. 6 is less theologically charged than I imagine.
- 346 Moses accompanies an unnamed wisdom figure, traditionally identified as al-Khaḍir, in Q 18, Sūrat al-Kahf.
- 347 Q Aḥzāb 33:36.
- 348 I have not been able to discover what report is being referred to here.
- 349 It is perhaps surprising that he here labels the report for specialists as having a textually explicit aspect (*mā kān manṣūṣ minhā*). He may mean, as in the case of witness testimony, that such information is treated as presumptively—i.e., procedurally, or formally—epistemologically strong, rather than as actually so. Or he may refer here to reports whose narrow statutory content is couched in semantically straightforward language.
- 350 This phrase could also mean, “If you know such a report . . .”
- 351 All references to incompleteness in the following discussion refer to the incomplete record of transmission, not to the text of the hadith-report. In general, he is addressing here the situation in which hadith-reports convey the words and deeds of the Prophet, but their chains of transmitters skip the generation of the Companions and begin with the Successors.
- 352 I.e., because paraphrased, not memorized word-for-word.
- 353 In other words, the Successor would assume that the Companion's opinion derived from the opinion of the Prophet.
- 354 “Oldest” (*kibār*) here and in paras. 557–8 could mean “most prominent,” but the implication is in either event probably the same.

- 355 I suppose he means that they lived too late to be credible transmitters from the Companions or the Prophet and thus I understand the word *iḥālah* in the phrase *bu'd iḥālah* to refer to the passage of years.
- 356 See above, paras. 450–71 and 506.
- 357 The referent of the pronoun is unclear to me.
- 358 In 16/637.
- 359 This could also mean either “Is it allowable for them to reach different results when they reason analogically?” or “Is it allowable for them to disagree about analogical reasoning?”
- 360 He means that you cannot know others as well as you can know yourself, but that these two disparate degrees of knowledge are equivalent in many instances for the purposes of applying the law, which often must be done on the basis of imperfect knowledge. Therefore, even though analogies or exercises of legal interpretation may be epistemically uneven, they are functionally equivalent and valid in those situations in which they are allowed.
- 361 That is, “each of you” who makes a ruling or interpretation about the same matter but on the basis of different kinds of evidence.
- 362 In other words, rulings concerning the same set of facts can differ depending on the epistemological strength of the underlying evidence, even though there is, in principle, only one objectively correct answer.
- 363 Ḥanafī jurists hold that the judge can find against a defendant in a civil case on the basis of his refusal to swear an oath denying the claim against him; Shāfi‘ī and Mālikī jurists consider such a refusal too weak a basis for judgment. See Ibn Rushd, *Distinguished Jurist’s Primer*, 2:563–64.
- 364 Q Baqarah 2:255.
- 365 Q Ra’d 13:41.
- 366 Q Nāzi‘āt 79:42–44.
- 367 Q Naml 27:65.
- 368 Q Luqmān 31:34.
- 369 Q Baqarah 2:150.

- 370 The line differs slightly from the version of it that was cited above in para. 43.
- 371 There is some slippage in the following discussion between the second and third grammatical persons.
- 372 Literally, “you,” but the upcoming phrase “one of them” in this sentence switches the discussion of the hypothetical to the third person.
- 373 Q Mā'idah 5:95.
- 374 This seems to mean that, since legal interpretation by definition occurs only when objective certainty is unavailable, no individual instance of ruling could be both a successful act of legal interpretation and an objectively correct ruling—it could only ever be one or the other. He seems not to account for the possibility of accidentally hitting upon the correct answer.
- 375 He refers here to the rules on marriage that appear at Q Nisā' 4:3–4 and 23. The phrase “what our right hands possess” refers here to concubinage.
- 376 I.e., the hadith-report cited in para. 603 about the two rewards for legal interpretation.
- 377 This passage and paras. 24 and 45 above seem to contradict the view expressed by al-Shāfi'ī in the “Ibtāl al-istiḥsān,” in a passage where he criticizes the assertion of the “rationalists” (*ahl al-'uqūl*), who claim that “the intellect [*'aql*] is for differentiating between things which are difficult to distinguish [*al-'aql li-tafṣīl al-mushtabih*].” See al-Shāfi'ī, “Ibtāl al-istiḥsān,” in *Kitāb al-Umm*, ed. 'Abd al-Muṭṭalib, 8:315. However, al-Shāfi'ī is not anti-intellect, but only against the idea that the intellect could substitute for revelation. Clearly the intellect is required for analogical and other kinds of legal reasoning.
- 378 Q An'ām 6:97.
- 379 Q Naḥl 16:16.
- 380 Both editors understand these as the interlocutor's opinions, though it is an unusually long statement of views that coincide with those of al-Shāfi'ī.

- 381 The last clause of this sentence (“and also because . . .” / *wa-lā fi al-qiyās*) is difficult. The Arabic seems to be a failed parallelism, though how it might be emended remains unclear, and neither editor remarks on it. A possible alternative rendering might be, “and also one may not opine about analogical reasoning on the basis of anything other than a report or analogical reasoning.”
- 382 Presumably he means in situations where laypersons are required or permitted to make some kind of estimation under the law, which include finding the prayer-direction.
- 383 Al-Shāfi‘ī here describes *a fortiori* arguments.
- 384 Q Zalzalāh 99:7–8.
- 385 In other words, *a fortiori* arguments are considered by some to be a natural extension of whatever rationale can be discerned for a given rule and thus are not true analogies. Actual comparisons between different things, however, in which one chooses which of two known items is most like a third item whose status is unknown, as in the case of the wrongly killed game animal (discussed, e.g., at paras. 597–9), are true analogies.
- 386 Both from Q Baqarah 2:233.
- 387 The phrase “in the proper manner” (*bi-l-ma’rūf*) possibly connotes the wife’s right to maintenance and/or equitable treatment, echoing its frequent occurrence toward the end of Q 2, Sūrat al-Baqarah (see 228–41), more strongly than the translation suggests.
- 388 This seems to mean that the purchaser is entitled to return her if he discovers a defect, even if he has had sexual intercourse with her. Some jurists held that sexual intercourse makes her nonreturnable, subsequently discovered defects notwithstanding, a view quoted in the next paragraph.
- 389 In other words, these jurists claim that there is an ontological or organic connection between produce and the underlying plant or animal from which it stems, but no such connection between a slave and the profits that he or she generates, and that the presence of that connection requires the return of any produce if the underlying item from which it stems is returned.

- 390 That is, if the slave were returned because of a defect, who would be entitled to keep the gift made to the slave while in the purchaser's possession?
- 391 In other words, if the slave had a unique skill that required a special tool, and he made such a tool while owned by the purchaser, then one could imagine that he and that tool were linked in such a way that (though al-Shāfi'ī disagrees with this point) the tool would be bought and sold, or returned to the original seller, along with him. One could also imagine the case of a one-legged slave who, while owned by the purchaser, fashioned his own prosthesis. Would al-Shāfi'ī send the slave back without the prosthesis?
- 392 I.e., if he returned the slave.
- 393 He means, as he is about to explain, that because delayed delivery is permitted in such a case, but would not be for exchanges of currency or of food, then those who permit it must not have drawn an analogy between currency and food.
- 394 A *mudd* was equivalent to approximately 2.5 litres in Egypt and a *raṭl* ranged between approximately 400–500 grams. Eliyahu Ashtor, "Makāyil," *Encyclopaedia of Islam*, 6:117–21.
- 395 In other words, according to al-Shāfi'ī, although the same prohibition applies to both exchanges of precious metals that can be used as currency and exchanges of foodstuffs, the only valid analogy that may be drawn from the prohibition as it applies to all such things is from foodstuffs sold by weight to foodstuffs sold by volume. Foodstuffs may not be analogized to precious metals used as currencies, despite being subject to the same prohibition concerning certain transactions, because the underlying reasons for the prohibition are different for food and for precious metals used as currency. Moreover, no cross-analogizing is possible in the case of exchanges of foodstuffs for precious metals such that the prohibition would apply to such a transaction since, as al-Shāfi'ī points out, one would not then be able to use money to buy food except in a present exchange.

- 396 He is pointing out that currency and foodstuffs are not treated analogously for purposes of alms or calculating damages for torts against property.
- 397 Presumably, the last phrase in this paragraph, *bi-asnān ma'lūmah* (lit. “according to known teeth”), refers to the ages of the camels paid in compensation as measured by their teeth (*sinn*, pl. *asnān*). For *sinn* and its various meanings, see Lane, *Lexicon*, 1437–38.
- 398 Such wounds are termed *mūḍīḥah*; the generally agreed compensation for the *mūḍīḥah* is five camels, i.e., one-twentieth of the full blood-price of one hundred camels. See Ibn Rushd, *Distinguished Jurist's Primer*, 2:515.
- 399 The following debate is about what fraction of the full blood-price should be paid by the kin-group for unintentional injuries. It has already been established that tortfeasors should pay out of their own assets for their intentional torts. As seems clear from paras. 644 and 650, al-Shāfi'ī believes that the kin-group should pay for all such unintentional injuries, but other jurists have set various threshold amounts below which they do not believe that the kin-group should pay: one-third for Mālikīs, one-tenth for Abū Ḥanīfah, one-twentieth for others. See Ibn Rushd, *Distinguished Jurist's Primer*, 2:514.
- 400 Q Nisā' 4:92 provides «Whoever kills a believer by mistake, must set free a believing slave and pay the blood-price to the victim's family.»
- 401 Al-Shāfi'ī expresses a hypothetical view here, in order to clarify that the analogy drawn by his interlocutor leads to an inconsistency. He says that, to be consistent, one ought really should not allow the kin-group to compensate any accidental injury whose compensation is less than the full blood-price, and that the principle behind such a position would be that the kin-group's liability for the full blood-price is an exception—like wiping the footwear before prayer (see paras. 664–5)—from which one may not analogize. But this is not al-Shāfi'ī's own view. His own view, expressed in the next paragraph, is that the kin-group's liability for unintentional homicide should be analogized, pro rata, to all other unintentional injuries.

- 402 What he seems to be saying is that if the kin-group is liable for the greater amount, then they should be liable for every smaller amount. It is an *a fortiori* argument.
- 403 In other words, it is not a dispensation from which it would be inappropriate to analogize—this is the point that al-Shāfi‘ī himself makes in para. 643.
- 404 It is interesting to note that the result of an analogy has, according to al-Shāfi‘ī, become the basis for an instance of consensus.
- 405 The “associate” is Mālik ibn Anas. The claim that authority lies in Medinese practice is a hallmark of Mālik’s legal thought. Although al-Shāfi‘ī here refers to one of Mālik’s stock phrases (“the best that I have heard,” *aḥsan mā sami‘tu*), in fact, in his assertion of this point in his *Muwatta‘a*, Mālik uses another of his stock phrases, “In our view, the matter is . . .” (*al-amr ‘indanā*). *Muwatta‘a*, 2:865. Al-Shāfi‘ī quotes that formulation in para. 648.
- 406 I think this means that both the interlocutor and Mālik are compelled to accept that they have analogized from the kin-group’s liability for unintentional homicide (the full blood-price) to its liability for unintentional injuries to the person (fractions of the blood-price), and that otherwise, their views cannot be justified in terms of a coherent rationale. The rationales that are rejected are the practice of Medina as authoritative in and of itself and the interlocutor’s arbitrary limitation on kin-group liability.
- 407 Both al-Shāfi‘ī and Abū Ḥanīfah (d. 150/767, the “associate” of al-Shāfi‘ī’s interlocutor referred to in the next paragraph) held that slaves are personally liable for their torts, but that the tortfeasor’s kin-group pays for torts committed against slaves. See Ibn Rushd, *Distinguished Jurist’s Primer*, 2:500–501.
- 408 This is the main point of controversy from paras. 651–62.
- 409 This is al-Shāfi‘ī’s support for calculating damages for an injured slave as one would those of a free person, but based on the slave’s price rather than his blood-price or (as his interlocutor does) relative to the actual diminution of his value. Because, as the interlocutor points out, there is no revealed authority, al-Shāfi‘ī must rely on an analogy.

- 410 I.e., in a case of intentional homicide. Retaliation is only allowed for intentional homicide and injuries.
- 411 Listed in the preceding paragraph.
- 412 By referring to them as a debt, he means that their delivery will be delayed to some time after payment for them has been effected—because not delivered immediately, they are analogous to a seller’s debt to a buyer who prepays. The Ḥanafīs disallow the sale of animals with advance payment and delayed delivery. See Ibn Rushd, *Distinguished Jurist’s Primer*, 2:240. Thus, al-Shāfi‘ī’s point seems to be that by allowing the camels to become a debt for the diminution in the value of the slave, who is considered a chattel, the Ḥanafīs have violated their own rule about the delayed delivery of animals in sales law, and thus their rules governing such sales and those governing tort compensation are inconsistent.
- 413 Q Mā’idah 5:6.
- 414 Presumably he is asking whether the term “wash” in Q Mā’idah 5:6, cited above in para. 664, can bear this interpretation.
- 415 Q Mā’idah 5:38.
- 416 The word “unintentional” (normally *khaṭa’*) is not in the Arabic in this sentence, but seems implied from the context.
- 417 In other words, unintentional killing has an exceptional liability structure because the kin-group pays, not the tortfeasor. Thus it may not be used as the basis for an analogy about compensation for intentional torts. It may, as seen above, be used to analogize to compensation for lesser unintentional injuries to the person. See the extended discussion above at paras. 641–62.
- 418 Q Nisā’ 4:4.
- 419 Q Baqarah 2:43.
- 420 Q Baqarah 2:196.
- 421 Q Mujādilah 58:3. This is a pre-Islamic divorce formula disapproved under Islamic law.
- 422 Q Mā’idah 5:95.
- 423 Q Mā’idah 5:89.

- 424 I.e., the normal compensation for the wrongful death of a human being.
- 425 I assume he means that the fetus's state was unknowable, contrary to the way that a normal tort victim's state would be knowable such that the usual rules of compensation could be applied, and that the fetus's treatment under the law is exceptional and thus may not be the basis of an analogy. It might be, on the other hand, that what is unknowable is the rationale for the Prophet's ruling, which, however, might have the same implication in regard to analogizing from the compensation due for the death of a fetus.
- 426 I.e., he may keep or return the animal, but if he returns it, he owes a modest amount of compensation for the milk. Selling an animal with pent-up milk is considered mildly deceptive and thus is treated as a defect that allows the buyer to return the animal to the seller.
- 427 I.e., the command in the hadith-report quoted in para. 680.
- 428 This measure was originally equal to four mudds. See above, n. 394.
- 429 Q Bayyinah 98:4.
- 430 Q Āl 'Imrān 3:105.
- 431 Q Baqarah 2:228.
- 432 The question seems very reasonable.
- 433 Q Ṭalāq 65:1.
- 434 Q Baqarah 2:228.
- 435 I.e., to fulfill the waiting period for its own sake.
- 436 Q Baqarah 2:228.
- 437 Q Ṭalāq 65:4.
- 438 Q Baqarah 2:234.
- 439 I.e., the second marriage would be annulled because unlawful during the waiting period, but would still trigger a second waiting period that would run partly concurrently with the first one.
- 440 Q Baqarah 2:226–7. This means that if the husband swears an oath to forego sexual relations with his wife for four months, and fulfills that oath, he then has the option to divorce her after that.
- 441 I think he means that the intercourse occurred immediately before the four months lapsed, but it could mean that the act of intercourse

occurred in the blink of an eye, as was suggested earlier in the discussion.

442 This could also mean “one rules against him,” depending on what the pronominal object of *‘alā* refers to: the legal situation (which is how I have translated it) or the husband who forswears.

443 In other words, if the husband refuses to choose between the two alternatives, the judge must terminate the marriage, since the husband cannot be compelled to have sexual intercourse with his wife, which is what he must do to continue in his marriage. He can, however, be forcibly divorced by a judge.

444 Contractual heirs include patrons, those to whom the deceased was bound as a client, whether contractually or through ties of former servitude.

445 That is, the collateral sister, as a Qur’anic heir, is awarded half the estate according to Q Nisā’ 4:176, but the remainder of the estate reverts to her as a uterine sister according to 12. Cognates and non-Qur’anic female agnates, who together constitute one category of heirs, are designated by the term *dhawū l-arḥām* (“uterines”), though, as emerges from this example, the category comprises more than “uterines” in the narrow sense. See generally Coulson, *Succession*.

446 Both from Q Nisā’ 4:176.

447 Q Anfāl 8:75 and Aḥzāb 33:6.

448 The issue under discussion concerns the relative inheritance shares of grandfathers (fathers’ fathers, however many generations removed) and agnatic (non-uterine) siblings. A systematic discussion can be found in Coulson, *Succession*, 79–90.

449 I.e., by another husband.

450 It is not clear to me whether he means a specific precedent, so I have hedged my bets by adding “revelation.”

451 I.e., more entitled than the grandfather.

452 This is a difficult sentence, but I think he simply means to ask whether there is some authority in scripture, Prophetic Practice, or consensus that provides any justification for deriving law from the opinion of a lone Companion.

- 453 Presumably, both this and the next phrase refer to analogizing.
- 454 There is an ambiguity here which I have deliberately retained: the sentence might mean that an analogy is weaker than consensus, or it might mean that both, taken as a pair, are weaker than the Qur'an and Prophetic Practice.

GLOSSARY OF NAMES AND TERMS

‘Abdallāh ibn ‘Abbās Late Companion, teacher of a generation of famous Meccan jurists (d. 68/687–88).

‘Abdallāh ibn Abī Bakr ibn Muḥammad ibn ‘Amr ibn Ḥazm Great-grandson of ‘Amr ibn Ḥazm (q.v.), Medinese legal authority (d. 130/747–48 or 135/752–53).

‘Abdallāh ibn Abī Labīd (al-Thaqafī, Abū l-Mughīrah) Medinese legal authority (d. 136/754 or shortly thereafter).

‘Abdallāh ibn Abī Qatādah Son of Abū Qatādah (q.v.), Medinese legal authority (d. between 86/705 and 96/715).

‘Abdallāh ibn Abī Salamah (al-Mājiṣhūn) Medinese legal authority (d. 106/724–25).

‘Abdallāh ibn Bābāh (or possibly Bābīh) Meccan legal authority, transmitted from Ibn ‘Umar (q.v.), among others.

‘Abdallāh ibn Dīnār Medinese legal authority (d. 127/744–45).

‘Abdallāh ibn ‘Iṣmah (al-Juṣhamī l-Ḥīmyārī) Probably Meccan, transmitted to, among others, ‘Aṭā’ ibn Abī Rabāḥ (q.v.).

‘Abdallāh ibn Kathīr (ibn al-Muṭṭalib ibn al-Wadā‘ah) (Not to be confused with ‘Abdallāh ibn Kathīr al-Dārī, who was a Meccan authority on the Qur’an, or with the famous Damascene Qur’an scholar ‘Abdallāh ibn Kathīr), Meccan transmitter of a hadith-report concerning advance payment (*salam*) (d. after 120/738).

‘Abdallāh ibn Mas‘ūd Late Companion, important source for early Iraqi legal authorities (d. 32/652–53).

‘Abdallāh ibn Muḥammad ibn Ṣayfī (Abū Yaḥyā l-Makḥzūmī) Transmitted from Ḥakīm ibn Ḥizām (q.v.).

- ‘Abdallāh ibn ‘Umar ibn Ḥafṣ* Great-great-grandson of ‘Umar ibn al-Khaṭṭāb (q.v.), brother of ‘Ubaydallāh ibn ‘Umar (q.v.), Medinese legal authority (d. 171–2/787–89).
- ‘Abdallāh ibn ‘Umar (ibn al-Khaṭṭāb)* Son of the caliph ‘Umar ibn al-Khaṭṭāb (q.v.) (d. 74/692).
- ‘Abdallāh ibn ‘Utbah* Nephew of ‘Abdallāh ibn Mas‘ūd (q.v.), Medinese, then Kufan legal authority (d. between 73/692 and 74/694).
- ‘Abdallāh ibn Wāqid ibn ‘Abdallāh ibn ‘Umar* Grandson of ‘Abdallāh Ibn ‘Umar (q.v.), Medinese legal authority (d. 119/737).
- ‘Abdallāh ibn Yazīd* Medinese legal authority who transmitted to Mālik ibn Anas (q.v.), among others (d. 148/765).
- ‘Abdallāh ibn Zayd (ibn Aslam)* Son of Zayd ibn Aslam, Medinese legal authority (d. 164/780–81).
- ‘Abdallāh al-Ṣunābiḥī* Companion (possibly confused in some sources with Abū ‘Abdallāh ‘Abd al-Raḥmān ibn ‘Usaylah al-Ṣunābiḥī, who was an associate of Abū Bakr al-Ṣiddīq (q.v.) and who also seems to have met the Prophet).
- ‘Abd al-‘Azīz ibn Muḥammad (ibn ‘Ubayd al-Darāwardī)* Medinese legal authority, teacher of al-Shāfi‘ī (d. 187/802 or 189/804).
- ‘Abd al-Majīd (ibn ‘Abd al-‘Azīz ibn Abī Rawwād, Abū ‘Abd al-Ḥamīd)* Meccan legal authority, teacher of al-Shāfi‘ī (d. 206/821).
- ‘Abd al-Malik ibn ‘Umayr* Kufan judge (d. 136/753–54).
- ‘Abd Manāf* Subgroup of the tribe of Quraysh (q.v.) that comprises several clans including that of the Prophet.
- ‘Abd al-Raḥmān ibn ‘Abdallāh ibn Mas‘ūd* Son of the Companion ‘Abdallāh ibn Mas‘ūd (q.v.).
- ‘Abd al-Raḥmān ibn ‘Abd al-Qārī* Possibly a late Companion, Medinese legal authority, said to have been in charge of the treasury (*bayt al-māl*) for ‘Umar ibn al-Khaṭṭāb (q.v.) (d. 85/704 or 88/707).
- ‘Abd al-Raḥmān ibn Abī Sa‘īd* Son of the Companion Abū Sa‘īd al-Khudrī (q.v.).
- ‘Abd al-Raḥmān ibn ‘Awf* Important early Meccan Companion.
- ‘Abd al-Raḥmān ibn Ghanm (al-Ash‘arī)* Identified by al-Shāfi‘ī as a Basran legal authority, but said elsewhere to have been active in Syria and Palestine, and to have visited Egypt (d. 78/697–98).

- ‘Abd al-Raḥmān ibn Ka‘b ibn Mālik* Medinese legal authority (d. between 96/715 and 125/743).
- ‘Abd al-Raḥmān ibn al-Qāsim (ibn Muḥammad ibn Abī Bakr)* Great-grandson of the caliph Abū Bakr (q.v.), Medinese legal authority (d. 126/743–44 or, less likely, 131/748–49).
- ‘Abd al-Raḥmān ibn Yazīd ibn Jāriyah* Brother of Mujammi‘ ibn Yazīd (q.v.), Medinese legal authority (d. 98/716–17).
- ‘Abd al-Raḥmān ibn al-Zabīr (al-Quraẓī)* Companion.
- ‘Abd Shams* Subgroup of the tribe of Quraysh (q.v.), within ‘Abd Manāf, that comprises a rival clan to that of the Prophet.
- ‘Abd al-Waḥḥāb (ibn ‘Abd al-Majīd ibn al-Ṣalt al-Thaqafī)* Medinese legal authority, teacher of al-Shāfi‘ī (d. 194/809).
- ‘Abd al-Waḥḥāb ibn Bakht (al-Umawī)* Medinese legal authority said to have died in battle on the Byzantine frontier (d. 113/731–32).
- ‘Abd al-Wāḥid (ibn ‘Abdallāh) al-Naṣrī* Syrian legal authority, served as governor of Homs, and then briefly of Mecca, Medina, and al-Ṭā‘if (d. after 106/724–25).
- Abraham (Ibrāhīm)* Patriarch, Qur’anic prophet.
- Abū ‘Ayyāsh Zayd (ibn al-Ṣāmit) al-Zuraqī* Companion (d. after 40/661–62).
- Abū Ayyūb al-Anṣārī (Khālīd ibn Zayd ibn Kulayb)* Companion, Ally, died on a raid in Byzantine territory (d. 50/670).
- Abū Bakr ibn Muḥammad ibn ‘Amr ibn Ḥazm (Abū Muḥammad)* Grandson of ‘Amr ibn Ḥazm (q.v.), a major source of material for his contemporaries, judge in Medina (d. between 100/718 and 120/738).
- Abū Bakr ibn Sālim* Medinese transmitter, grandson of ‘Abdallāh ibn ‘Umar (q.v.) (d. 106/724–25).
- Abū Bakr (ibn Abī Quḥāfah) al-Ṣiddīq* Companion, first caliph after Muḥammad (d. 13/634).
- Abū l-Dardā’ (‘Uwaymir ibn Zayd, but possibly ibn Mālik, ‘Āmir, Tha‘labah, or ‘Abdallāh)* Important Companion (d. ca. 32/652–53 or 34/654–55).
- Abū Ḥanīfah ibn Simāk ibn al-Faḍl al-Shihābī* Teacher of al-Shāfi‘ī about whom little is known (and, it seems, not to be confused with the much older Simāk ibn al-Faḍl al-Khawḷānī l-Yamānī l-Ṣan‘ānī).

Abū Ḥārith SEE Ibn Abī Dhi'b.

Abū Hurayrah Companion, major source for Prophetic hadith-reports (d. 59/678).

Abū Idrīs al-Khawlānī Judge in Damascus during the reign of the Umayyad caliph 'Abd al-Malik (r. ca. 65–86/685–705) (d. ca. 80/700).

Abū Jahm (ibn Ḥudhayfah) Companion.

Abū l-Minhāl ('Abd al-Raḥmān ibn Muṭ'im al-Bunānī) Basran who settled in Mecca (d. 106/724–25).

Abū l-Muhallab ('Amr, Mu'āwiyah, or 'Abd al-Raḥmān, or some combination thereof with ibn) Basran, paternal uncle of Abū Qilābah (q.v.).

Abū Mūsā (ibn Qays) al-Ash'arī Prominent Companion of Yemeni origin, one of the arbitrators at Ṣiffīn (d. 42/662–63 or slightly later).

Abū Qatādah (probably al-Ḥārith ibn Rib'ī) Medinese Companion known as “the horseman of God's Emissary” (*fāris Rasūl Allāh*).

Abū Qays ('Abd al-Raḥmān ibn Thābit al-Sahmī) Client of 'Amr ibn al-'Āṣ (q.v.), participated in the conquest of Egypt and settled there (d. 54/674).

Abū Qilābah ('Abdallāh ibn Zayd) Important Basran transmitter who died in Syria (d. between 104/722 and 107/726).

Abū Rāfi' (Ibrāhīm, Aslam, Thābit, or Hurmuz) Client of the Prophet (d. after 35/656–60).

Abū Sa'īd al-Khudrī Companion (d. ca. 63/682–83 or 74/693).

Abū Salamah ibn 'Abd al-Raḥmān (ibn 'Awf) Son of the Companion 'Abd al-Raḥmān ibn 'Awf (q.v.) (d. 94/712–13 or 104/722–23).

Abū l-Sanābil ibn Ba'kak Companion, Mecca.

Abū Shu'bah Source for 'Ammār al-Duhnī (q.v.).

Abū Shurayḥ al-Ka'bī Companion, Medina (d. 68/687–88).

Abū Sufyān (ibn Ḥarb) A leader of the Meccan opposition to Muḥammad who became Muslim after the conquest of Mecca (d. ca. 32/653).

Abū Suhayl (Nāfi') ibn Mālik Medinese contemporary of Ibn Shihāb al-Zuhrī (q.v.), uncle of the jurist Mālik ibn Anas (q.v.) (d. between 132/749 and 136/754).

Abū Ṭalḥah (Zayd ibn Sahl) Companion (d. 32/652–53, 34/654–55, or 51/671).

- Abū Tha‘labah (al-Khushanī)* Companion (d. 75/694–95).
- Abū ‘Ubayd (Sa‘d ibn ‘Ubayd al-Zuhrī)* Possibly a client of ‘Abd al-Raḥmān ibn ‘Awf (q.v.), Medinese legal authority (d. 98/716–17).
- Abū ‘Ubaydah (‘Āmir ibn ‘Abdallāh) ibn al-Jarrāḥ* Prominent early Companion, appointed by ‘Umar to govern Syria, where (in Palestine) he succumbed to the plague of ‘Amwās (d. 18/639).
- Abū l-Zinād (‘Abdallāh ibn Dhakwān)* Medinese transmitter (d. between 130/747 and 132/750).
- Abū l-Zubayr (Muḥammad ibn Muslim al-Makkī)* Meccan legal authority (d. ca. 126/744).
- ‘Ād* Ancient Arabian people to whom the Qur’anic prophet Hūd (q.v.) was sent.
- ‘Ā’ishah* According to Sunnis, the Prophet’s most important wife, daughter of Abū Bakr al-Ṣiddīq (q.v.) (d. 57/676).
- al-‘Ajlanī (‘Uwaymir) and his wife* The married couple for whose benefit Q Nūr 24:6–9, concerning mutual oath-swearing (*li‘ān*), a procedure for dealing with intramarital accusations of adultery, was revealed.
- ‘Alī ibn Abī Ṭālib* Cousin and son-in-law to the Prophet and fourth caliph after him, considered by Shi‘a to be the first Imam (d. 40/660).
- ‘Alī ibn (al-)Ḥusayn (Zayn al-‘Ābidīn)* Grandson of ‘Alī ibn Abī Ṭālib (q.v.) and father of Muḥammad ibn ‘Alī (q.v.), considered by Shi‘a to be the fourth Imam (d. 94/712 or 95/713).
- Allies (anṣār, sg. anṣārī)* Those Medinese who aided the early Muslim Emigrants (q.v.) from Mecca and themselves became Muslims.
- ‘Alqamah (ibn Qays al-Nakha‘ī)* Early Kufan legal authority (d. between 61/680 and 63/683 or between 72/691 and 73/693).
- ‘Ammār (ibn Mu‘āwiyah, or possibly ibn Ṣāliḥ or ibn Ḥibbān) al-Duhnī* Kufan transmitter (d. 133/750–51).
- ‘Amrah (bint ‘Abd al-Raḥmān ibn Sa‘d ibn Zurārah)* Transmitter of hadith-reports from ‘Ā’ishah (q.v.) (d. 98/716–17 or later).
- ‘Amr ibn ‘Abdallāh ibn Ṣafwān (al-Jumaḥī)* Meccan legal authority, source for ‘Amr ibn Dīnār (q.v.).
- ‘Amr ibn Abī ‘Amr* Medinese legal authority, client of al-Muṭṭalib ibn ‘Abdallāh ibn Ḥaṭṭab (q.v.) (d. between 144/761 and 158/775).

- ‘Amr ibn Abī Salamah (al-Tinnāsī)* Syrian legal authority who settled in Egypt, teacher of al-Shāfi‘ī (d. between 212/827 and 214/830).
- ‘Amr ibn al-‘Āṣ* Companion who led the Muslim invasion of Egypt in 19/640.
- ‘Amr ibn Dīnār* Meccan legal authority, teacher of Ibn Jurayj (q.v.) and Sufyān ibn ‘Uyaynah (q.v.) (d. 126/743–44).
- ‘Amr ibn Ḥazm* Companion sent by Muḥammad in the year 10/631–32 to instruct the al-Ḥārith ibn Ka‘b tribe in religion, recipient in that capacity of a letter from Muḥammad containing various points of positive law.
- ‘Amr ibn Shu‘ayb (ibn Muḥammad ibn ‘Amr ibn al-‘Āṣ)* Medinese legal authority, grandson of the Companion ‘Amr ibn al-‘Āṣ (q.v.) (d. 118/736).
- ‘Amr ibn Sulaym al-Zuraqī* Medinese legal authority (d. 104/722–23).
- ‘Amr ibn ‘Uthmān (ibn ‘Affān)* Son of the caliph ‘Uthmān ibn ‘Affān (q.v.).
- ‘Amr ibn Yaḥyā (al-Māzinī)* Medinese legal authority (d. 140/757–58).
- Anas ibn Mālīk* Companion (d. 93/711).
- Anmār* Arabian tribe attacked by the Muslims in 3/624 during an expedition known as Dhū Amarr.
- al-anṣārī* SEE Ally.
- Arabs* Usually refers to nomadic Arabs of the Arabian Peninsula, but also used to refer to native speakers of Arabic.
- ‘Arafah* A plain east of Mecca, one of the stations of the Pilgrimage.
- al-A‘raj (‘Abd al-Raḥmān ibn Hurmuz)* Medinese legal authority, settled later in Alexandria (d. 117/735).
- ‘arāyā-sale* Sale by a date-grower of an estimated amount of dates still on the tree for a defined quantity of dried dates.
- Ashyam al-Dībābī* (fl. 13–23/634–44).
- Asīd ibn Abī Asīd* Client of the Companion Abū Qatādah (d. 136–7/754–55).
- ‘Āṣim ibn ‘Umar ibn Qatādah* Grandson of the Companion Qatādah ibn Nu‘mān, Syrian legal authority (d. between 119/737 and 129/747).
- Aslam* A subdivision of the Khuzā‘ah tribe, which was allied with the tribe of Quraysh (q.v.).
- the Aslamī man and his wife* A married couple from the tribe of Aslam; Unays al-Aslamī (q.v.) was sent by Muḥammad to determine whether

- the woman had committed unlawful sexual intercourse and when he ascertained that she had, he had her stoned.
- al-Aswad ibn Sufyān* Patron of ‘Abdallāh ibn Yazīd (q.v.).
- al-Aswad ibn Yazīd (ibn Qays al-Nakha‘ī)* Kufan legal authority, nephew of ‘Alqamah (q.v.) (d. between 74/693 and 75/695).
- ‘Aṭā’ ibn Abī Rabāḥ* Meccan legal authority, student of ‘Abdallāh ibn ‘Abbās (q.v.), teacher of Ibn Jurayj (q.v.) (d. 115/733).
- ‘Aṭā’ ibn Yasār (al-Hilālī)* Medinese legal authority (d. 97/715 or 103/721).
- ‘Aṭā’ ibn Yazīd al-Laythī* Medinese, then Syrian, legal authority (d. 105/723–24 or 107/725–26).
- Awṭās* Wadi near Ṭā’if where the battle of Ḥunayn was fought in early 8/630.
- Ayyūb ibn Abī Tamīmah (Kaysān al-Sakhtiyānī)* Basran legal authority (d. between 131/748 and 132/750).
- Badr* Town near Medina, site of a battle in 2/624 in which the Muslims and their Medinese Allies (q.v.) fought the Meccans and in which the Muslims achieved their first victory, which was both militarily and symbolically important.
- al-Baḥrayn* Region in eastern Arabia that included a larger territory than the modern state of Bahrain.
- Bajālah (ibn ‘Abd or ibn ‘Abadah al-Tamīmī)* Meccan (or Basran), possibly a chancery official under ‘Umar ibn al-Khaṭṭāb (q.v.).
- Bilāl* Companion, Abyssinian slave who became the first muezzin (prayer-caller).
- Busr ibn Sa‘īd* Medinese ascetic and legal authority (d. between 100/718 and 101/720).
- caliph (khalīfah)* Political head of the Muslim community after Muḥammad’s death in 632.
- Client (mawlā)* Person bound to a social superior (patron) either contractually or through former ties of servitude.
- Companions (of God’s Emissary)* Contemporaries of the Prophet Muḥammad who supported him or transmitted hadith-reports directly from him.

- al-Ḍaḥḥāk ibn Sufyān (al-Kilābī)* Companion sent by the Prophet to collect alms from the Kilāb tribe.
- Dhāt al-Riqāʿ* Site of military expedition sometime between 4/625 and 5/626, located three days' journey from Medina .
- Dhū Ṭuwā (also Ṭiwā or Ṭawā)* Wadi just outside Mecca.
- Dihyah (ibn Khalīfah al-Kalbī)* Companion said to have been sent by Muḥammad with a letter to the Byzantine emperor Heraclius (r. ca. AD 610–41) while Heraclius was visiting Palestine (ca. AD 630?), died during the caliphate of Muʿāwiyah ibn Abī Sufyān (q.v.).
- Emigrants (muhājirūn)* Those early Muslims who left Mecca and settled in Medina ca. 1/622.
- Faithful Spirit (al-ruḥ al-amīn)* A Qurʾanic term understood to refer to the Angel Gabriel, who mediated God's revelation of the Qurʾan to Muḥammad, that appears in Q Shuʿarāʾ 26:193: «It is the message sent down by the Lord of all beings,/Which the Faithful Spirit has brought down/Upon your heart, that you may be one of the warners.» Q Shuʿarāʾ 26:192–4.
- Fāṭimah bint Qays* Female Companion.
- al-Furayʿah bint Mālīk ibn Sinān* Companion, sister of Abū Saʿīd al-Khudrī (q.v.).
- hadith-report* Short narrative introduced by a chain of transmitters usually conveying the words or depicting the behavior of the Prophet Muḥammad; a principal source of law alongside the Qurʾan.
- Hajar* Sasanian port in eastern Arabia near Hasa (al-Aḥṣāʾ) in modern Saudi Arabia.
- Ḥakīm ibn Hizām* Companion, nephew of the Prophet's first wife, Khadijah (d. 54/673).
- Ḥamal ibn Mālīk ibn al-Nābighah (al-Hudhalī)* Companion who settled in Basra (possibly d. before 23/644).
- Ḥammād ibn Salamah* Basran legal authority (d. 167/783–84).
- Harīr* (“clamor”) Became the name for a night of fierce fighting between the forces of ʿAlī ibn Abī Ṭālib (q.v.) and Muʿāwiyah ibn Abī Sufyān (q.v.) during the Battle of Ṣiffīn (37/657).

- al-Ḥasan (al-Baṣrī)* Famous Basran pietist and legal authority (d. 110/728–29).
- al-Ḥasan ibn ‘Alī ibn Abī Ṭālib* Companion, son of ‘Alī ibn Abī Ṭālib (q.v.), regarded by Shi‘a as their second Imam (d. 48/669).
- al-Ḥasan ibn Muslim (ibn Yannāq)* Meccan legal authority (d. before 106/724–25).
- Hāshim* Subclan within the tribe of Quraysh (q.v.) to which the Prophet belonged.
- Hilāl (ibn ‘Alī) ibn Usāmah (al-‘Āmirī)* (Perhaps to be distinguished from Hilāl ibn Usāmah al-Fihri, also from Medina), Medinese legal authority (d. ca. 120/738).
- Hind bint ‘Utbah (ibn Rabī‘ah)* Wife of Abū Sufyān (q.v.), mother of Mu‘āwiyah ibn Abī Sufyān (q.v.), and who herself bore considerable animosity toward Muḥammad before becoming Muslim in the wake of the conquest of Mecca.
- Hishām ibn Ḥakīm ibn Ḥizām* Companion, son of Ḥakīm ibn Ḥizām (q.v.), whom he predeceased, nephew of al-Zubayr ibn al-‘Awwām (q.v.) (d. before 20/640).
- Hishām ibn ‘Urwah* Medinese legal authority (d. 145/762–63).
- Ḥittān (ibn ‘Abdallāh) al-Raqāshī* Basran legal authority (d. between 71/690 and 74/694).
- Hūd* Qur’anic prophet sent to the Arabian people of ‘Ād (q.v.).
- al-Ḥudaybiyyah* Place where a treaty was concluded in 6/628 between the Muslims and the Meccans that allowed for Muḥammad and his followers to perform the Pilgrimage to Mecca in the following year; the Muslims claimed a breach of the treaty soon thereafter and conquered Mecca in 8/629–30.
- Ḥumayd ibn ‘Abd al-Raḥmān (ibn ‘Awf)* Grandson of ‘Abd al-Raḥmān ibn ‘Awf (q.v.), Medinese legal authority (d. 95/713–14 or 105/723–24).
- Ḥumayd ibn Qays* Meccan Qur’an reciter and legal authority (d. 130/747–48 or between 132/750 and 136/754).
- al-Ḥusayn ibn ‘Alī ibn Abī Ṭālib* Companion, son of ‘Alī ibn Abī Ṭālib (q.v.), regarded by Shi‘a as their third Imam, killed by Umayyad forces in 61/680.

- Ibn ‘Abbās* SEE ‘Abdallāh ibn ‘Abbās.
- Ibn Abi ‘Ammār* (‘*Abd al-Raḥmān ibn ‘Abdallāh*) Meccan legal authority who transmitted from Abū Hurayrah (q.v.) and to Ibn Jurayj (q.v.).
- Ibn Abi Dhi‘b* Medinese legal authority (d. 159/776).
- Ibn Abi Fudayk* SEE Muḥammad ibn Ismā‘īl ibn Abī Fudayk.
- Ibn Abi l-Ḥuqayq* (Abū Rāfi‘ *Salām*) Jewish merchant in Khaybar whom Muḥammad had assassinated some time after 1/622.
- Ibn Abi Mulaykah* Meccan legal authority (d. 118/736).
- Ibn Abi Najīh* Meccan legal authority (d. between 130/747 and 131/749).
- Ibn Azhar* Patron of Abū ‘Ubayd (q.v.).
- Ibn al-Hād* SEE Yazīd ibn ‘Abdallāh (ibn Usāmah) ibn al-Hād.
- Ibn Jurayj* Important Meccan legal authority (d. 150/767).
- Ibn Ka‘b* SEE ‘Abd al-Raḥmān ibn Ka‘b ibn Mālik.
- Ibn Mas‘ūd* SEE ‘Abdallāh ibn Mas‘ūd.
- Ibn Mirba‘ al-Anṣārī* (*Zayd, Yazīd, or ‘Abdallāh*) Companion.
- Ibn Nuwayrah* (*Mālik*) Companion sent by Muḥammad in the year 10/631–32 to the Ḥanzalah tribe to collect alms.
- Ibn Rawāḥah* (‘*Abdallāh*) Companion, second deputy commander of the expedition to Mu‘tah (q.v.).
- Ibn Sa‘īd ibn al-‘Āṣ* (*Abān*) Companion, one of Muḥammad’s scribes, sent by Muḥammad to be governor of al-Baḥrayn (q.v.).
- Ibn Shihāb al-Zuhrī* Major early Medinese legal authority (d. 124/742).
- Ibn Sīrīn* Basran legal authority (d. 110/728–29).
- Ibn Sulaymān* (‘*Abdallāh*) Son of Sulaymān ibn Yasār (q.v.).
- Ibn Ṭāwūs* Yemeni legal authority, son of Ṭāwūs (q.v.) (d. 132/749–50).
- Ibn ‘Umar* SEE ‘Abdallāh ibn ‘Umar.
- Ibn Umm Maktūm* (‘*Amr or ‘Abdallāh ibn Qays*) Companion, the blind son of Umm Maktūm (q.v.) whom the caliph ‘Umar ibn al-Khaṭṭāb (q.v.) nonetheless allowed to be the standard-bearer at the battle of al-Qādisiyyah (15/636), where, according to some, he was killed.
- Ibn Unays* (‘*Abdallāh al-Juhānī*) Companion, commander of a military expedition (d. 54/674 or 80/699–700).
- Ibn ‘Uyaynah* SEE Sufyān ibn ‘Uyaynah.

- Ibn al-Zubayr* (‘*Abdallāh*) Son of al-Zubayr ibn al-‘Awwām (q.v.), led a briefly successful revolt against the Umayyads and ruled a limited territory as caliph (d. 73/692–93).
- Ibrāhīm ibn ‘Abd al-Raḥmān ibn ‘Awf* Son of the Companion ‘Abd al-Raḥmān ibn ‘Awf (q.v.), Medinese legal authority (d. between 95/713 and 96/715).
- Ibrāhīm ibn Maysarah* Meccan legal authority (d. ca. 132/749–50).
- Ibrāhīm (ibn Yazīd) al-Nakha‘ī* Kufan legal authority (d. 96/715).
- ‘Ikrimah ibn Khālīd* Meccan legal authority (d. 105/723–24).
- imam* (Lower case), one who leads prayers.
- Imam* (Upper case), leader, a title usually used by Sunni Muslims for the caliphs (q.v.) but can also be used for other prominent religious figures apart from the Prophet Muḥammad; used by Shi‘a for the line of persons who they believe should have succeeded to the spiritual and temporal leadership of the Muslim community after Muḥammad’s death.
- ‘Imrān ibn (al-)Ḥuṣayn* Companion, judge in Basra briefly (d. between 52/672 and 53/673).
- Ishāq ibn ‘Abdallāh ibn Abī Ṭalḥah* Medinese legal authority (d. ca. 132/749).
- Ismā‘il ibn Abī Ḥakīm* Client of the family of al-Zubayr ibn al-‘Awwām (q.v.).
- Jābir ibn ‘Abdallāh* Companion (d. 78/697).
- Jābir ibn Yazīd al-Ju‘fī* Kufan legal authority regarded as Shi‘i (d. ca. 128/745).
- al-Jābiyah* Town in Palestine in the Jawlān (Golan Heights).
- Ja‘far (ibn Abī Ṭālib)* Companion, brother of ‘Alī ibn Abī Ṭālib, first deputy commander of the expedition to Mu’tah (q.v.), where he was killed in battle (d. 8/629).
- Ja‘far ibn Muḥammad (al-Ṣādiq)* Great-great-grandson of ‘Alī ibn Abī Ṭālib (q.v.), considered the sixth Shi‘i Imam, Medinese legal authority (d. 148/765).
- Jarīr ibn ‘Abdallāh (al-Bajalī)* Companion, Kufa, then Qarqisiyā (modern al-Buṣayrah in Syria) (d. 51/671).

jihad (jihād) Divinely sanctioned warfare.

Jubayr ibn Muṭʿim Companion, Medina (d. between 58/678 and 59/679).

Kaaba (Kaʿbah) Also referred to as the Sacred House (*al-bayt al-ḥarām* or just *al-bayt*, the House), and situated within the Sacred Mosque (*al-masjid al-ḥarām*), it is a black cubic structure in Mecca that existed in pre-Islamic times, traditionally considered to have been built by Abraham and Ishmael; it is the focal point of the Pilgrimage and also the place toward which Muslims are generally required to face when praying.

al-Khaḍir (frequently al-Khiḍr) Qurʾanic wisdom figure who appears (though unnamed) in Q 18, Sūrat al-Kahf.

Khālīd ibn al-Walīd Companion, prominent Meccan and then Muslim military commander (d. 21/642).

Khansāʾ bint Khidām Female Companion.

Khārijah ibn Zayd ibn Thābit One of the so-called seven jurists of Medina (d. 99/717–18 or 100/718–19).

Khawwāt ibn Jubayr Companion, Medina (d. 40/660–61 or 42/662–63).

Khudrah clan A small subclan of the Medinese Khazraj tribe to which the Companion Abū Saʿīd al-Khudrī (q.v.) belonged.

Khufāf ibn Nudbah Pre-Islamic poet who lived into the Islamic period and became Muslim.

Laqīṭ al-Iyādī (ibn Maʿmar or Yaʿmar or possibly Maʿbad) Pre-Islamic poet (d. sixth century AD).

al-Layth ibn Saʿd Egyptian legal authority (d. 175/791–92).

Mahmūd ibn Labīd Companion, Medina (d. between 64/682 and 73/693 or between 96/714 and 97/716).

Māʿiz Man whom the Prophet had stoned for unlawful sexual intercourse.

Makhlad ibn Khufāf (al-Ghifārī) Son of the Companion Khufāf, Medina, known as the transmitter of the hadith-report about retaining profit in exchange for liability for risk of loss (*al-kharāj bi-l-ḍamān*).

Makhūl Syrian legal authority (d. between 112/730 and 114/732).

Mālik (ibn Abī ʿĀmir al-Aṣḥabī) Grandfather of Mālik ibn Anas (q.v.) (d. between 70/689 and 80/700).

Mālik ibn Anas Famous Medinese jurist, teacher of al-Shāfiʿī (d. 179/795).

- Ma'mar (ibn Rāshid)* Yemeni legal authority (d. 153/770).
- al-Maqburī (Sa'īd ibn Abī Sa'īd)* Medinese legal authority (d. ca. 125/742).
- Minā* Pilgrimage station on the route east from Mecca to 'Arafah (q.v.).
- Mu'ādh ibn Jabal* Companion sent by Muḥammad to be his governor in Yemen (d. ca. 17/638).
- Mu'āwiyah ibn Abī Sufyān* First Umayyad caliph (d. 60/680).
- Mu'āwiyah ibn al-Ḥakam (al-Sulamī)* Companion.
- Muḥammad* Prophet, God's Emissary (d. 11/632).
- Muḥammad ibn (al-)ʿAjlān* Medinese legal authority (d. 148–49/765).
- Muḥammad ibn ʿAlī ibn al-Ḥusayn (al-Bāqir)* Great-grandson of ʿAlī ibn Abī Ṭālib (q.v.) and father of Jaʿfar ibn Muḥammad (q.v.), considered the fifth Shiʿi Imam, Medinese legal authority (d. ca. 115/733).
- Muḥammad ibn ʿAmr (ibn ʿAlqamah)* Medinese legal authority (d. between 144/761 and 145/763).
- Muḥammad ibn Ibrāhīm (al-Taymī)* Medinese legal authority (d. between 119/737 and 121/739).
- Muḥammad ibn Ismāʿīl ibn Abī Fudayk* Medinese legal authority, teacher of al-Shāfiʿī (d. 199/814–15).
- Muḥammad ibn Jubayr ibn Muṭʿim* Brother of Nāfiʿ ibn Jubayr (q.v.), son of the Companion Jubayr ibn Muṭʿim (q.v.), Medinese legal authority (d. before 99/717).
- Muḥammad ibn al-Munkadir* Meccan legal authority (d. 130/748).
- Muḥammad ibn Ṭalḥah (ibn Yazīd?) ibn Rukānah* Relative of Yazīd ibn Ṭalḥah ibn Rukānah (q.v.), Medinese Successor (d. 110/728–29).
- Muḥammad ibn Yaḥyā ibn Ḥabbān* Medinese legal authority (d. 121/739).
- Mujāhid (ibn Jabr)* Meccan legal authority, student of ʿAbdallāh ibn ʿAbbās (q.v.), early Qurʾan commentator (d. between 102/721 and 104/723).
- Mujammiʿ ibn Yazīd ibn Jāriyah* Brother of ʿAbd al-Raḥmān ibn Yazīd ibn Jāriyah (q.v.), transmitted to al-Qāsim ibn Muḥammad (q.v.).
- al-Munkadir ibn ʿAbdallāh ibn al-Hudayr ibn ʿAbd al-ʿUzzā* Father of Muḥammad ibn al-Munkadir (q.v.), Companion whom the caliph ʿUmar (q.v.) had beaten for praying after the afternoon prayer.
- Mūsā ibn Abī Tamīm* Medinese legal authority, transmitted to Mālik ibn Anas (q.v.).

- Muṣ'ab ibn Sa'd ibn Abī Waqqāṣ* Son of the Companion Sa'd ibn Abī Waqqāṣ (q.v.), Medinese legal authority (d. 103/721–22).
- Muslim (ibn Khālīd al-Zanjī)* Meccan legal authority, teacher of al-Shāfi'ī (d. 179/795 or 180/796).
- al-Muṣṭalaq tribe* A small clan allied with the tribe of Quraysh (q.v.) that was attacked by the Muslims in 5 or 6/early or late 627.
- Mu'tah* Site of a battle in southern Jordan in 8/629 in which the Byzantines defeated a Muslim force.
- mut'ah-marriage* A marriage for a contractually fixed term and specified payment, outlawed by Sunnis but not by Shi'a.
- al-Muṭṭalib* The Prophet's subclan within the tribe of Quraysh (q.v.).
- al-Muṭṭalib (ibn 'Abdallāh) ibn Ḥanṭab* Patron of 'Amr ibn Abī 'Amr (q.v.) (d. ca. 120/738).
- muzābanah-sale* An exchange of fresh for dried dates (or any exchange of produce involving a known for an unknown amount), prohibited under Islamic law because an inherently unequal exchange of like for like.
- al-Muzdalifah* A Pilgrimage station halfway between 'Arafah (q.v.) and Minā (q.v.).
- Nāfi'* Client of 'Abdallāh ibn 'Umar ibn al-Khaṭṭāb (q.v.), Medinese legal authority (d. 117/735–36).
- Nāfi' ibn Jubayr ibn Muṭ'im* Brother of Muḥammad ibn Jubayr (q.v.), son of the Companion Jubayr ibn Muṭ'im (q.v.), Medinese legal authority (d. between 96/715 and 99/717).
- Nāfi' ibn 'Ujayr (or 'Ujayrah) ibn 'Abd Yazīd* Early Medinese legal authority (d. early second/eighth centuries).
- Najd* The central part of the Arabian Peninsula.
- Nasr* Pre-Islamic Arabian deity.
- Nawf (ibn Faḍālah) al-Bikālī* Syrian legal authority (d. between 90/708 and 100/718).
- Nawfal* Clan of the tribe of Quraysh.
- Prophetic Practice (sunnah)* Normative content of the actions and sayings of the Prophet Muḥammad as depicted in hadith-reports (q.v.).
- al-Qaddūm* A place near Medina.

- al-Qāsim ibn Muḥammad (ibn Abī Bakr)* Grandson of the first caliph Abū Bakr al-Ṣiddīq (q.v.), one of the so-called seven jurists of Medina (d. ca. 106/724–25).
- Qays ibn Āṣim* From the Sa'd clan of the tribe of Tamīm, came with a delegation to Muḥammad in the year 9/630–31 and was then sent the following year to collect alms from the Sa'd clan.
- Qubā'* A village just south of Medina.
- Quraysh* Tribe to which the Prophet Muḥammad belonged, which dominated Mecca politically and economically.
- Rabī'ah ibn Abī 'Abd al-Raḥmān* Medinese legal authority known as Rabī'ah the Legal Reasoner (Rabī'at al-Ra'y) (d. 136/753).
- Rāfi' ibn Khadij* Companion (d. between 50/670 and 74/694).
- Ramadan (ramaḍān)* Ninth month of the Muslim calendar, when Muslims are required to fast.
- Rifā'ah (ibn Samaw'al, or possibly Shamwīl, al-Qurazī)* Companion.
- al-Ṣa'b ibn Jaththāmah* Companion (d. between 11/632 and 13/634).
- Sacred House* SEE Kaaba.
- Sacred Mosque* SEE Kaaba.
- Sa'd ibn Abī Waqqāṣ* Early Meccan Companion (d. between 49/669 and 50/670).
- Sa'd ibn Ibrāhīm (ibn 'Abd al-Raḥmān ibn 'Awf)* Grandson of 'Abd al-Raḥmān ibn 'Awf (q.v.), judge in Medina (d. between 125/742 and 128/746).
- Sa'd ibn Ishāq ibn Ka'b ibn 'Ujrah* Medinese legal authority (d. between 140/757 and 145/762).
- Ṣafwān ibn Mawḥab* Hijazi legal authority, transmitted to 'Aḩā' ibn Abī Rabāḩ (q.v.) and 'Amr ibn Dīnār (q.v.).
- Ṣafwān ibn Sulaym (Abū 'Abdallāh al-Zuhri)* Medinese legal authority (d. 132/749–50).
- Sahl ibn Abī Ḩathmah* Late Companion (probably d. after 60/680).
- Sahl ibn Sa'd al-Sā'idī* One of the very last Companions to die (d. 88/707 or 91/710).
- Sa'id ibn Jubayr* Kufan legal authority, student of 'Abdallāh ibn 'Abbās (q.v.) (d. 95/714).

- Sa'īd ibn al-Musayyab* One of the so-called seven jurists of Medina (d. 93/712 or 94/713).
- Sa'īd ibn Sālim (ibn Abī l-Hayfā' al-Qaddāh)* Meccan legal authority and teacher of al-Shāfi'ī (d. before 200/815–16).
- Sa'īd ibn Yasār* Medinese legal authority (d. between 116/734 and 120/738).
- Sā'idah ibn Ju'ayyah* Pre-Islamic poet of the Hudhayl tribe.
- Ṣāliḥ* Qur'anic prophet sent to the Arabian people of Thamūd (q.v.).
- Ṣāliḥ ibn Khawwāt* Medinese legal authority (d. mid-second/eighth century).
- Sālim (ibn 'Abdallāh ibn 'Umar)* Medinese legal authority, son of 'Abdallāh ibn 'Umar (q.v.) and grandson of the caliph 'Umar ibn al-Khaṭṭāb (q.v.) (d. ca. 106/724).
- Sālim Abū l-Naḍr* Client of 'Ubaydallāh ibn Abī Rāfi' (q.v.).
- Shaban (sha'bān)* Eighth month of the Muslim calendar.
- al-Sha'bī (ʿĀmir ibn Sharāḥīl)* Kufan legal authority (d. between 100/718 and 110/729).
- Shawwal (shawwāl)* Tenth month of the Muslim calendar.
- Shibl (ibn Ma'bad)* Companion.
- shighār-marriage* A pre-Islamic practice, outlawed under Islamic law, in which a father agrees to marry one daughter into another family in exchange for allowing the other family to marry a daughter into his own family, whereby the exchange of daughters substitutes for both dowries that would otherwise accompany them.
- Shu'ayb* Qur'anic prophet traditionally identified with the Biblical Jethro.
- Subay'ah bint al-Ḥārith (al-Aslamī)* Female Companion who appears in a hadith-report.
- Successors (tābi'ūn)* The generation who lived after (“succeeded”) Muḥammad's Companions (q.v.).
- Sufyān ibn 'Uyaynah* Meccan legal authority, teacher of al-Shāfi'ī and his second most frequently cited source after Mālik ibn Anas (q.v.) (d. 198/814).
- Suhayl ibn Abī Ṣāliḥ (Dhakhwān al-Sammān)* Medinese legal authority (d. 138/755–56).

- Sulaymān (ibn Abī Muslim) al-Aḥwal* Meccan legal authority, maternal half-brother of Ibn Abī Najīḥ (q.v.).
- Sulaymān ibn Arqam* Basran legal authority, adherent of an early anti-pre-destinarian theological movement (d. mid-second/eighth centuries).
- Sulaymān ibn Yasār* One of the so-called seven jurists of Medina (d. 107/726).
- Suwāʿ* Pre-Islamic Arabian deity.
- Tabūk* Town in what is today northwestern Saudi Arabia, destination of a military expedition to the north in 9/630.
- Ṭalḥah ibn ʿAbdallāh ibn ʿAwf* Medinese judge and legal authority (d. 97/715–16 or 99/717–18).
- Ṭalḥah ibn ʿUbaydallāh* Early Meccan Companion killed at the Battle of the Camel (35/656).
- Tamīm (ibn Aws) al-Dārī* Companion, settled in Syria or Palestine (d. 40/660–61).
- Ṭawūs* Meccan legal authority, student of ʿAbdallāh ibn ʿAbbbās (q.v.) (d. 106/724–5).
- Thamūd* Ancient Arabian people to whom the Qurʾanic prophet Ṣāliḥ (q.v.) was sent.
- ʿUbādah ibn al-Ṣāmīt* Companion sent by ʿUmar ibn al-Khaṭṭāb (q.v.) to Palestine to teach its inhabitants the Qurʾan (d. 34/654–55 or after 40/661).
- ʿUbaydallāh ibn ʿAbdallāh ibn ʿUtbah* Great-nephew of ʿAbdallāh ibn Masʿūd (q.v.), one of the so-called seven jurists of Medina (d. ca. 98/716).
- ʿUbaydallāh ibn Abī Rāfiʿ* Son of a client of the Prophet Muḥammad, he (or his brother) was secretary to ʿAlī ibn Abī Ṭālib (q.v.).
- ʿUbaydallāh ibn Abī Yazīd* Meccan legal authority (d. 126/743–44).
- ʿUbaydallāh ibn ʿUmar (ibn Ḥafṣ ibn ʿĀsim ibn ʿUmar ibn al-Khaṭṭāb)* Great-great-grandson of ʿUmar ibn al-Khaṭṭāb (q.v.), brother of ʿAbdallāh ibn ʿUmar ibn Ḥafṣ (q.v.), one of the so-called seven jurists of Medina (d. 147/764).
- Ubayy ibn Kaʿb* Companion (d. ca. 32/652).
- Uḥud* An important battle against the Meccans in 3/625 in which Muḥammad and his followers suffered serious casualties.

- ‘Umar ibn ‘Abd al-‘Azīz* (*‘Umar II*) Umayyad caliph known for his piety (r. ca. 99–101/717–20).
- ‘Umar ibn al-Ḥakam* According to al-Shāfi‘ī, a mistake in an *isnād* quoted by Mālik ibn Anas (q.v.), which should be corrected to Mu‘āwiyah ibn al-Ḥakam (q.v.).
- ‘Umar ibn al-Khaṭṭāb* Companion, second caliph after Muḥammad (d. 23/644).
- ‘Umar ibn ‘Ubaydallāh* Patron of Sālim Abū l-Naḍr (q.v.).
- Umm Salamah* A wife of the Prophet.
- Umm Zinbā‘* Woman mentioned in a poem of Sā‘idah ibn Ju‘ayyah (q.v.).
- Unays al-Aslamī* Companion sent by the Prophet to ascertain whether a certain woman had committed unlawful sexual intercourse.
- ‘Urwah ibn al-Zubayr ibn ‘Awwām* One of the so-called seven jurists of Medina, son of the Companion al-Zubayr ibn ‘Awwām (q.v.) and father of Hishām ibn ‘Urwah (q.v.) (d. between 91/709 and 99/718).
- Usāmah ibn Zayd (ibn Aslam)* Son of Zayd ibn Aslam (q.v.) and brother of ‘Abdallāh ibn Zayd (q.v.).
- ‘Uṣfān* Site of a sort of standoff between Muḥammad and the Meccans in 6/628, just before the treaty of al-Ḥudaybiyyah.
- ‘Uthmān ibn ‘Abdallāh ibn Surāqah* Grandson of ‘Umar ibn al-Khaṭṭāb (q.v.) through his mother Zaynab, Medinese legal authority, governor of Mecca (d. 118/736).
- ‘Uthmān ibn ‘Affān* Early Meccan Companion, third caliph after Muḥammad (r. ca. 23/644–35/656).
- Wadd* Pre-Islamic Arabian deity.
- Wahb ibn Munabbih* Yemeni authority on pre-Islamic lore about South Arabia and Judaism (d. 114/732).
- Wāsi‘ ibn Ḥabbān* Successor, Medinese legal authority.
- Wāthilah ibn al-Asqa‘* Companion, settled in Syria (d. 85/704).
- Yaghūth* Pre-Islamic Arabian deity.
- Yaḥyā ibn ‘Abd al-Raḥmān ibn Ḥāṭib* Medinese legal authority (d. 104/722–23).
- Yaḥyā ibn Ḥassān* Basran legal authority, teacher of al-Shāfi‘ī (d. 208/823).

- Yaḥyā ibn Saʿīd (ibn Qays al-Anṣārī)* Medinese legal authority (d. 143/760–61).
- Yaḥyā ibn Sulaym* Meccan legal authority, teacher of al-Shāfiʿī (d. between 193/808 and 195/812).
- Yāʿūq* Pre-Islamic Arabian deity.
- Yazīd ibn Abdallāh (ibn Usāmah) ibn al-Hād* Medinese legal authority (d. 139/756–57).
- Yazīd ibn Jāriyah* Companion.
- Yazīd ibn Rūmān* Medinese legal authority (d. 130/747–48).
- Yazīd ibn Shaybān* A maternal uncle of ʿAmr ibn ʿAbdallāh ibn Ṣafwān (q.v.).
- Yazīd ibn Ṭalḥah ibn Rukānah* Relative of Muḥammad ibn Ṭalḥah ibn Rukānah (q.v.), Medinese Successor.
- Yūnus ibn ʿUbayd (ibn Dīnār al-ʿAbdī l-Qaʿnabī, Abū ʿAbdallāh)* Basran legal authority (d. 139/756).
- Yūsuf ibn Māhāk* Meccan legal authority (d. ca. 103/721–22?).
- Zayd Abū ʿAyyāsh* SEE Abū ʿAyyāsh al-Zuraqī.
- Zayd ibn Aslam* Medinese legal authority (d. 136/753).
- Zayd ibn Ḥārithah* Companion, client of the Prophet, commander of the expedition to Muʿtah (q.v.) during which he died.
- Zayd ibn Khālīd al-Juhanī* Companion (d. 72/692 or 78/698).
- Zayd ibn Thābit (al-Anṣārī)* Companion (d. ca. 45/665–66).
- Zaynab bint Kaʿb (ibn ʿUjrah)* Wife of the Companion Abū Saʿīd al-Khudrī (q.v.).
- al-Zibriqān ibn Badr* A chief and poet of the Saʿd clan of the tribe of Tamīm who came with a delegation to Muḥammad in the year 9/630–31 and was then sent the following year to collect alms from the Saʿd clan.
- Ziyād ibn ʿIlāqah (al-Thaʿlabī)* Kufan legal authority (d. 135/752–53).
- Zoroastrians (majūs, Magians)* Adherents of Zoroastrianism, court religion of the Sasanian empire in Iran.
- al-Zubayr (ibn al-ʿAwwām)* Early Meccan Companion killed at the Battle of the Camel in 35/656.
- al-Zuhrī* SEE Ibn Shihāb al-Zuhrī.

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